Paper 16: Tax Management & Practice

Question 1.

(a) What are the disadvantages of indirect tax?

(b) When one can pay duty under protest in Excise?

(c) Assessable value of certain goods imported from UK is ₹35,00,000. The packet contains 35,000 pieces with maximum retail price ₹150 each. The goods are assessable under section 4A of the Central Excise Act, 1944, after allowing an abatement of 40%. The excise duty rate is 8% ad valorem. Calculate the amount of additional duty of customs u/s 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @10% ad valorem.

(d) A manufacturer of wooden furniture sold the furniture without painting in it. After the furniture is sold, colour painting is done at the instance of buyers wherever necessary as per their specification either by the painters suggested by the manufacturer or other painters directly engaged by the buyers. Whether such painting would amount to manufacture?

(e) What kind of duty is to be performed by DGFT regarding SCOMET Items?

Answer:

(a) The following are the disadvantages of indirect tax:

(i) Indirect taxes do not depend on paying capacity. Since this tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as 'regressive'.

(ii) Tax on goods and services increases its prices, which reduces demand of goods and services. Lesser demand means lower growth of industrialization.

(iii) Higher customs duty and excise duty increases cost of modern machinery and technology.

(iv) Indirect taxes increase the prices of products and hence are often perceived as inflationary.

(b) Sometimes it happens that the classification of goods done by excise authorities, assessable value determined by the excise authorities in adjudication proceedings, etc. are not agreeable or acceptable to the assessee. In such cases, the assessee can file an appeal and in the meanwhile he can pay duty under protest.

(c) The goods are assessable under section 4A of the Central Excise Act, 1944 and hence:

- As per section 3 of Customs Tariff Act, 1975, value for the purpose of levy of additional duty of customs u/s 3(1) = Retail Sale Price – permissible abatement = [35,000 × (₹150 – 40% of ₹150)] = ₹31,50,000.
- Additional duty of customs = 8% of ₹31,50,000 = ₹2,52,000. (EC and SHEC are exempt).

(d) In this case, although colour painting of wooden furniture is incidental or ancillary to manufacture of furniture, the furniture is sold as a finished product without painting and the painting is done after the furniture is sold. Hence it would not amount to manufacture as no new commercial product having different name, use or character comes into existence.

(e) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) is either prohibited or restricted. These cover nuclear material, nuclear reactors, equipment for nuclear explosive devises, rocket systems, toxic chemicals, micro-organisms, chemicals for weapons, viruses, etc.
Application for license for exporting these items is to be made to DGFT (Director General of Foreign Trade). Application will be considered by Exim Facilitation Committee (EFC). In respect of items specified in Appendix 3 to Schedule 2 of ITC (HS), application will be considered by Inter-Ministerial working group in DGFT based on criteria as specified.

Question 2.

(a) State the salient features of TIN (Tax Identification Number).
(b) An outdoor caterer charges total sum of ₹9 lakhs (excluding taxes); client supplies goods and services valuing ₹3.5 lakhs (fair market value, excluding taxes) to the caterer on payment of ₹80,000 (excluding taxes). Compute the value of taxable service and tax thereon.
(c) Define Indian Customs Waters.
(d) A of Bangalore buys goods worth ₹300 (plus ₹6 CST) from Delhi and good worth ₹500 (plus VAT ₹20) from Bangalore. State the eligibility of the credit of tax paid on inputs.
(e) What is Compounded Levy Scheme?

Answer:

(a) The salient features of Tax Identification Number (TIN) are as follows:
(i) TIN consist of 11 digits.
(ii) First two characters represent the state code which is allotted by the Central Government which is common for all the dealer of a state and balance nine characters will be, however, different in different States.
(iii) TIN is useful to the department of commercial tax in case of computer applications, for detecting stop filers and delinquent accounts.
(iv) TIN also help full to the department for cross checking of sales and purchases across the state VAT dealers.

(b) According to Rule 2C of the Service Tax (Determination of Value) Rules, 2006, Total amount = Amount charged ₹9 lakhs + FMV of goods and services supplied by the client ₹3.5 lakhs – Amount charged by client for supplying such goods and services ₹80,000 = ₹11,70,000.
Value of taxable service = 60% of ₹11,70,000 = ₹7,02,000
Tax @12.36% on ₹7,02,000,= ₹86,767.

(c) The term Indian Customs Waters means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.
Indian Customs Waters extend up to 24 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Contiguous Zone as well.

Indian Territorial Waters extend up to 12 nautical miles from the base line whereas Contiguous Zone extended to a further 12 nautical miles from the outer limit of territorial waters.

(d) The CST of ₹6 paid on purchases from Delhi is not eligible for credit as CST paid on purchases is not allowed as credit. But the VAT of ₹20 paid on purchases from Bangalore is eligible for credit.

(e) Normal excise procedures and controls are not practicable when there are numerous small manufacturers. Rule 15 of Central Excise Rules provides that Central Government may, by notification, specify the goods in respect of which an assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates. The scheme is presently applicable only to stainless steel pattas/pattis and aluminium circles. These articles are not eligible for SSI exemption.

Question 3.

(a) What is the significance of consideration in the context of service tax? Whether a security deposit that is returnable on completion of provision of service is a consideration for service or not?

(b) State the requirements for removal of final products under Central Excise.

Answer:

(a) As per section 67 of the Finance Act, 1994, 'consideration' includes any amount that is payable for the taxable service provided or to be provided. As per section 2(d) of the Indian Contract Act, 1872, consideration is defined as "when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing, something such act or abstinence or promise is called a consideration for the promise."

Activity carried out without any consideration are outside the ambit of service, such as donations, gifts, free charities etc. However an act by a charitable institution for consideration would be a service and taxable unless otherwise exempted. But following are some examples of non-monetary consideration:

(i) Supply of goods and services in return for provision of service.

(ii) Refraining or forbearing to do an act in return for provision of service.

(iii) Tolerating an act or a situation in return for provision of a service.

(iv) Doing or agreeing to do an act in return for provision of service.

Grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research. Donations to a charitable organisation are not consideration unless charity is obligated to provide something in return.

Security deposit which is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colourable substance wherein the interest on the deposit substitutes for the consideration for service

provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also security deposit should not be in lieu of advance payment for the service.

(b) Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate.

As per Rule 11(2) of Central Excise Rules, Invoice shall contain –
(i) Registration Number
(ii) Address of jurisdictional Central Excise Division.
(iii) Name of consignee
(iv) Description and classification of goods
(v) Time and date of removal
(vi) Mode of transport and vehicle registration number
(vii) Rate of duty
(viii) Quantity and Value of goods
(ix) Duty payable on the goods.

Question 4.

(a) Mr. Amit is regularly paying excise duty and value added tax on his manufacturing and sales activities respectively. He seeks your advice while calculating the Value Added Tax on sales as well as net VAT liability from the following information:
Purchases from local market (VAT inclusive of @12.5%) ₹ 2,58,750.
Manufacturing expenses is ₹ 1,60,000.
Profit on Cost @75%.
Excise Duty @12.36%
Output VAT @12.5%

(b) P Ltd. imported goods valuing ₹ 400 lakhs vide a Bill of Entry presented before the proper officer on 01-11-2013, on which the rate of customs duty was 10%. The proper officer decided that the goods are subject to chemical examination and therefore, the same were provisionally assessed at a value of ₹ 400 lakhs and P Ltd. paid provisional duty ₹ 40 lakhs on the same date. P Ltd. wants to voluntarily pay duty of ₹10 lakhs on 15-12-2013. Can it do so? What are the conditions which are to be completed before such payment. Compute the amount of interest (if any) as per Customs Act, 1962.

Answer:

(a) Computation of Tax Payable

Cost of Purchases Manufacturing expenses	₹2,30,000 [₹2,58,750 × 100/112.5] ₹1,60,000
Total cost Profit @75% on cost	₹3,90,000 ₹2,92,500 [₹3,90,000 × 75/100]
Assessable Value	₹6,82,500

Add: Excise Duty	₹84,357 [₹6,82,500 × 12.36/100]
Taxable Turnover Add: Output VAT	₹7,66,857 ₹95,857 [₹7,66,857 × 12.50/100]
Aggregate Sales	₹8,62,714
Value Added Tax payable Less: Input Tax Credit	₹95,857 ₹28,750
Net Value Tax Payable	₹67,107

(b) The department has clarified vide Circular No. 40/2011-Cus, dated 09-09-2011 that whenever any importer or exporter intimates to the proper officer in writing that he desires to pay voluntarily certain amount of duty of customs, at any time before finalization of the provisional assessment, the following conditions must be satisfied before such payment:

(i) Such duty should be paid, along with interest on the amount of duty so being paid, @ 18% from the first day of the month in which the duty is provisionally assessed till the date of payment thereof;

(ii) The term and conditions of the bond and the amount of security of surety furnished at the time of provisional assessment shall remain unchanged; and

(iii) No refund of duty will be granted till the assessment is finalized.

Thus, on above compliances, Piano Ltd. can provisionally pay duty.

Question 5.

(a) "Advance Authorisation' is not transferable, while material imported under DFIA will be transferable after fulfillment of export obligation." — Write about Advance Authorisation and DFIA (Duty Free Import Authorisaton) in this context.

(b) Mr. Desai, a manufacturer sells goods to Mr. Kapoor, a distributor for ₹3,000 (excluding of VAT). Mr. Kapoor sells goods to Mr. Kumar, a wholesale dealer for ₹ 3,600. The wholesale dealer sells the goods to a retailer for ₹ 4,500, who ultimately sells to the consumers for ₹ 8,000. Compute the Tax Liability, input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming VAT rate @ 12.5%.

Answer:

(a) Under Advance Authorisation inputs required to manufacture export products can be imported without payment of customs duty.

Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import raw materials. Since the raw materials can be imported before exports of final products, the Authorisation issued for this purpose is called '*advance Authorisation*'.

Advance Authorisation is issued to allow duty free import of inputs with normal allowance for wastage. In addition, fuel, oil, energy, catalysts etc. required can also be allowed. Duty free import of mandatory spares upto 10% of CIF Value of Authorisation, which are required to be exported with resultant products, may also be allowed. However, prohibited items of imports cannot be imported.

The Advance Authorisation will be for actual user only. It is not transferable. The material imported under Advance Authorisation is also not transferable even after completion of

export obligation. However, goods manufactured out of such imported material can be disposed of, after export obligation is fulfilled.

In case of Advance Authorisation, positive value addition is sufficient, while in case of DFIA, 20% value addition is required, except in case of gem and jewellery sector.

DFIA is issued to allow duty free import of inputs used in manufacture of export product (with normal allowances for wastages), and fuel, energy, catalyst etc. Duty free import of mandatory spares upto 10% value of authorisation, which is required to be exported/ supplied with resultant product, is also allowed.

DFIA is initially issued with 'actual user condition'. Imports will be exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty and Safeguard duty, if any.

DFIA is issued on basis of SION. Import Authorisation will be limited to quantity mentioned in SION. DFIA is issued to manufacturer-exporter or merchant-exporter for following – (i) Physical exports including supplies to SEZ (b) Intermediate supplies and (c) Main contractors for supply of goods under Deemed Exports (except supply against Advance Authorisation and marine containers). In case of some deemed exports, DFIA is available to sub-contractors also.

(b) As per Invoice Method:

Particulars	Amount (₹)	VAT Liability (₹)	VAT Credit (₹)	Tax to Government (₹)
Mr. Desai sold to Mr. Kapoor Taxable turnover @12.5%	3,000	375	—	375
Mr. Kapoor sold to Mr. Kumar	3,600	450	375	75
Mr. Kumar sold to retailer	4,500	563	450	113
Retail sold to consumer	8,000	1,000	563	437

Note: Total VAT paid into the credit of Government (i.e. from the Manufacturer to Consumer) is ₹1,000 (i.e. ₹375 + ₹75 + ₹113 + ₹437).

Question 6.

(a) Write down the differences between direct tax and indirect tax.

(b) Is change in tariff heading/sub-heading under the Central Excise Tariff Act, 1985 required between the input material and the resultant finished product so as to render such finished products liability to duty?

Answer:

(a) The following are the differences between direct tax and indirect tax:

Particulars	Direct Taxes	Indirect Taxes
Meaning	Direct Taxes are those taxes where the incidence and impact falls on the same person.	Indirect Tax is a tax where incidence and impact fall on two different person.
Nature of tax	Direct Tax progressive in nature.	Indirect Taxes is regressive in nature.
Levy & Collection	Levied and collected from the Assessee.	Levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.
Taxable Event	Taxable Income / Taxable	Purchase / Sale / Manufacture

	Wealth of the Assessees.	of goods and provision of services.
Collected	After the income for a year is earned or valuation of assets is determined on the valuation date.	At the time of sale or purchases or rendering of services.
Shifting of Burden	Directly borne by the Assessee. Hence, cannot be shifted.	Tax burden is shifted or the subsequent / ultimate user.
Psychological Effect	It is psychologically very difficult for a person to pay some amount after it is received in his hands. Hence, there is psychological resistance.	Since the price of commodity or service is already inclusive of indirect taxes, the customer i.e. the ultimate tax payer does not feel a direct pinch while paying indirect taxes and hence, resistance to indirect taxes is much less compared to resistance to direct taxes.
Collection Mechanism	Direct taxes are mainly on income/ wealth of individuals, firms or corporate bodies, where millions of transactions are carried out in lakhs of places and keeping an eye over all such transactions is virtually impossible.	Indirect taxes are easier to collect as indirect taxes are mainly on goods/ commodities/ services, for which record keeping, verification and control is relatively easy (at least in organized sector). Manufacturing activities are carried out mainly in organized sector, where records and controls are better.
Cost of Collection	Collection cost of direct taxes as percentage of tax collected are higher in indirect taxes compared to indirect taxes.	Collection costs of indirect taxes as percentage of tax collected are lower in indirect taxes compared to direct taxes.
Tax Evasion	Tax evasion is comparatively more in direct taxes where it is on unorganized sector, since control is difficult.	Tax evasion is comparatively les in indirect taxes in organized sector due to convenience of control.
Usage of taxes	Government can judiciously use the direct taxes to support development in desirable areas, while discouraging in backward areas, infrastructure development etc.	Government can judiciously use the indirect taxes to support development in desirable areas, while discouraging it in others, e.g. reducing taxes on goods manufactured in tiny or small scale units; lowering taxes in backward areas etc.
Effect on prices	Direct taxes do not affect prices of goods and service.	Tax on goods and services increases its prices, which reduces demand of goods and services. Lesser demand

		means lower growth of industrialization.
Inflationary Effect	Direct taxes are not inflationary.	Indirect taxes increase the prices of products and hence are often perceived as inflationary. Higher customs duty and excise duty increases cost of modern machinery and technology.

(b) In **CCE vs. Kapri International (P) Ltd**, the assessee contended that in order to constitute a manufacturing activity the raw material and the final product must fall within different chapters of the Central Excise Tariff Act. The assessee argued that since the raw material (cotton fabrics) and the final product (bed sheets) fall within the same chapter, there is no manufacture. The Supreme Court observed that the cutting of cotton fabrics into small pieces brought into existence new marketable commodities-bed sheets, table cloth, etc., known as such in the market and thus manufacture occurs. Similarly, in Laminated Packing Case, a new product called "Laminated Craft paper" emerged when plain craft paper is laminated. Both plain and laminated craft paper fall under the same tariff heading. The Supreme Court held that the activity of lamination of duty paid craft paper amounts to manufacture. SC further observed that the fact of both items falling within the same chapter is not relevant. Once there is a transformation resulting in new commodity, duty is leviable.

Thus, if manufacture takes place, the commodity is dutiable even if the raw material and the resultant product fall under the same tariff heading.

Question 7.

(a) Compute the net VAT liability of Ritesh using the information given as follows:-
Raw material purchased from foreign market (including duty paid on imports @ 20%): ₹ 13,200
Raw material purchased from local market (including VAT charged on the material @ 4%): ₹ 22,880
Raw material purchased from neighbouring state (including CST paid on purchases @ 2%): ₹ 7,854
Storage, transportation cost and interest: ₹ 2,750
Other manufacturing expenses incurred: ₹ 660
Ritesh sold the goods to Binay and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%.

(b) An importer imported some goods for subsequent sale in India at $ 30,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹60. The item imported attracts basic duty at 10% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14% plus education Cess of 2% and SAH 1%. Special Additional Customs Duty is 4%. Find the total duty payable.

Answer:

(a) Computation of net VAT liability (₹)

Imported goods (import duty is not eligible as Input credit, hence,	13,200

import duty will form part of cost)	
Local purchases [Input VAT is eligible for credit, hence, it will not form part of cost] [Total Price inclusive of VAT ₹ 22,880 – VAT 22,880 x 4 ÷ 104 = 22,880 – 880 = ₹ 22,000]	22,000
Purchases from other state (CST is ineligible for credit, hence, it will form part of cost)	7,854
Storage, transportation, interest and other manufacturing expenses [2,750 + 660] [Interest has been included in cost of production, assuming that it is an interest on working capital and operating expenditure; in any other case, it will not form part of cost of production.]	3,410
Total Cost	46,464
Add: Profit @ 10 % on cost	4,646
Sale Price	51,110
Add: VAT @ 12.5% on sale price	6,389
Total Invoice Price	57,449
VAT on Sales	6,389
Less: Credit of VAT paid on local purchases	880
VAT payable in cash	5,509

(b) Calculation of duty payable:

	(₹)
CIF value USD 30,000 X 60	18,00,000
Add: Loading and unloading @1%	18,000
Assessable Value	18,18,000
Add: Basic Customs Duty @10% on ₹18,18,000	1,81,800
	19,99,800
Add: Additional Customs Duty [@14% x ₹19,99,800]	2,79,972
	22,79,772
Add: Education Cess 2% on (₹ 1,81,800+ ₹ 2,79,972)	9,235
Add: SAH @1% on (₹ 1,81,800+ ₹ 2,79,972)	4,618
	22,93,625
Add: Special Additional Customs Duty [@4% x ₹22,93,625]	91,745
Total value of imported goods	23,85,370

Therefore total duty payable ₹5,10,634.

Notes:

- While calculating CVD we should not take into account NCCD of excise.
- CVD can also be imposed even if there is exemption from Basic Customs Duty.

- Imported goods contain more than one classification and the importer is unable to give the breakup of each item with value then the highest rate of duty among them will be considered.
- CVD can be levied only when the importer imported manufactured goods. It means CVD can be levied only if goods are obtained by a process of manufacture [*Hyderabad Industries Ltd* v *Union of India* (1995) (SC)].

Question 8.

(a) What is Anti-Dumping? Describe the features of it with the help of an example.

(b) What is Provisional Assessment? How it is finalized? Whether any interest is payable or receivable regarding this matter?

(c) Define arm's length principle. Also mention the difficulties in applying the arm's length principle

Answer:

(a) Dumping means export of goods by exporters of one country/territory to the market of another country/ territory at a price lower than the price prevailing in the country of export and the difference in such price is called margin of dumping. This is an unfair trade practice which can have a distortive effect on international trade and needs to be condemned under WTO law.

Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value. This is an unfair trade practice which can have a distortive effect on international trade. Anti dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry. It provides relief to the domestic industry against the injury caused by dumping. Anti-dumping is a measure to rectify the trade distortive effect of dumping and re-establish fair trade, which is achieved by imposition of a duty on dumped imports, not exceeding the margin of dumping.

Salient Features of Anti-Dumping:

i. It is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry

ii. It provides relief to the domestic industry against the injury caused by dumping and gives domestic industry a level playing field.

iii. The duty is imposed as a deterrent effect to discourage dumped imports, so that users can buy material from domestic industry from whom they were not buying earlier on account of availability of cheap dumped imports.

iv. The idea is to levy and collect extra tax, rather to take the landed value of imports to a level where domestic industry can fairly compete with imports and sell the product in the domestic market.

Example:

Sale value of domestic industry at factory gate ₹150 (net of taxes). Landed Value of imports ₹100. Hence, Price under cutting = ₹150 (-) ₹100 = ₹50. This is positive undercutting.

It creates pressure on domestic industry from imports, as the imported goods are sold at ₹100, which is less than the price charged by domestic industry.

On the contrary, if the Sale value of domestic industry at factory gate (net of taxes) is ₹120 and the Landed value of imports ₹135, then, Price under cutting = ₹120 (-) ₹135 = ₹(15). This is negative undercutting. The domestic industry is in a comfortable position, as the price of imports is more than the price charged by the domestic industry.

(b) Rule 7 of Central Excise Rules make provisions in respect of provisional assessment. Provisional assessment can be requested by the assessee. Department cannot itself order provisional assessment.

An assessee can request for provisional assessment in following circumstances – (a) Assessee is unable to determine the value of excisable goods in terms of Section 4 of CEA on account of non-availability of any document or information *or* (b) Assessee is unable to determine rate of duty applicable.

In aforesaid cases, assessee may request Assistant/Deputy Commissioner in writing giving reasons for provisional assessment of duty. [Assessee should give reason why he wishes to have provisional assessment]. After such request, the Assistant/Deputy Commissioner may by order allow payment of duty on provisional basis. The Assistant/Deputy Commissioner shall also specify the rate or value at which the duty will be paid on provisional basis. [Rule 7(1)].

Payment of duty on provisional basis will be allowed subject to execution of bond for payment of differential duty [Rule 7(2)].

Finalisation:

Final assessment will be made by Assistant/Deputy Commissioner after getting the required details. In case of such provisional assessment, demand can be raised within one year after the provisional assessment is finalised. After making payment of duty on provisional basis, Assistant/Deputy Commissioner should pass order for final assessment within 6 months from date of order of provisional assessment. This period can be extended by further 6 months by Commissioner and further without any time limit by Chief Commissioner [Rule 7(3)]. If differential amount is payable, interest is payable [Rule 7(4)]. If excess amount was paid, it is refundable with interest [Rule 7(5)]. The refund is subject to provision of Unjust Enrichment [Rule 7(6)].

AC/DC is required to pass order of final assessment after getting relevant information, within six months of date of communication of his order allowing provisional assessment. The period of 6 months can be extended by Commissioner of CE, on making a specific request, for reasons to be recorded in writing. Extension beyond one year for further period can be granted only by Chief Commissioner. [Rule 7(3) of Central Excise Rules].

Interest payable/receivable:

If differential duty is found to be payable, interest as specified in Section 11AA or 11AB will be payable by assessee from first day of the month succeeding the month *for which* such amount is determined till date of payment thereof. [Rule 7(4)].

If differential amount is found to be refundable to assessee, it shall be refunded with interest at rate as specified in Section 11BB from first day of the month succeeding the month *for which* refund is determined till the date of refund [Rule 7(5)]. Thus, interest is payable by department is on the same basis as payable by assessee, i.e. not from date of finalisation of provisional assessment, but from month next to the month on which duty was provisionally paid. [Note that u/s 11BB, interest on delayed refund is payable only three months after filing of refund application. This provision does not apply to refund obtainable after finalization of Provisional Assessment].

If duty is paid on provisional basis, refund claim can be filed within one year after duty is adjusted after final assessment. [Explanation B(eb) to Section 11B].

(c) The arm's length principle seeks to ensure that transfer prices between members of an MNE (Multi National Enterprise) ("controlled transactions"), which are the effect of special relationships between the enterprises, are either eliminated or reduced to a large extent. It requires that, for tax purposes, the transfer prices of controlled transactions should be similar to those of comparable transactions between independent parties in comparable circumstances ("uncontrolled transactions"). In other words, the arm's length principle is based on the concept that prices in uncontrolled transactions are determined by market forces and, therefore, these are, by definition, at arm's length. In practice, the "arm's-length price" is also called "market price". Consequently, it provides a benchmark against which the controlled transaction can be compared.

The Arm's Length Principle is currently the most widely accepted guiding principle in arriving at an acceptable transfer price. As circulated in 1995 OECD guidelines, it requires that a transaction between two related parties is priced just as it would have been if they were unrelated. The need for such a condition arises from the premise that intra-group transactions are not governed by the market forces like those between two unrelated entities. The principle simply attempts to place uncontrolled and controlled transactions on an equal footing.

Difficulties in applying the arm's length principle:

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

i. The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
ii. It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
iii. Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
iv. The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
v. Arm's length principle involves a lot of cost to the group.

Question 9.

(a) Compute the duty payable under the Customs Act, 1962 for an imported machinery based on the following information:

(i) Assessable value of the imported equipment US $ 12,000.

(ii) Date of Bill of Entry 25.03.2014 basic customs duty on this date 20% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 65.

(iii) Date of Entry inwards 21.03.2014 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 57.

(iv) Additional duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975: 15%.

(v) Additional duty under Section 3(5) of the Customs Tariff Act, 1975: 4%.

(vi) Education Cess @ 2% in terms of the Finance (No. 2) Act, 2004 and secondary and higher education cess @ 1% in terms of the Finance Act, 2007.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

(b) "Duty drawback rates are of following types – (A) All Industry Rate (B) Brand Rate and (C) Special Brand Rate." — Describe.

Answer:

(a) Computation of Duty

	Duty		Total
	Rate	₹	₹
Assessable Value (US$ 12,200 x Rate of exchange in force on date of presentation of bill of entry i.e., ₹65)	---	---	7,87,800.00
Add: BCD [As per section 15(1)(a), rate of duty prevalent on date of presentation of bill of entry or date of entry inwards, whichever is later, shall be applicable. Therefore, rate prevalent on 25-03-2013 viz. 20% shall be taken.]	20.00%	1,57,560.00	1,57,560.00
		1,57,560.00	9,45,360.00
Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption)	15.00%	1,41,804.00	1,41,804.00
		2,99,364.00	10,87,164.00
Add: Education Cess @ 3% on DUTY sub-total upto last stage	3.00%	8,981.00	8,981.00
		3,08,345.00	10,96,145.00
Add: Special CVD u/s 3(5) @ 4% of total value (including duty)	4.00%	43,846.00	43,846.00
Total (rounded off on nearest rupee)		3,52,191.00	11,39,991.00

(b) The types of duty drawback rates are described as follows:

A. All Industry Drawback Rates - All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India. The rates are periodically revised – normally on 1st June every year.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds ₹500. Revised rates have been announced vide Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier Notification No. 81/2006-Cus(NT) dated 13-7-2006].

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated13-7-2006].

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006). In case of some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods].

B. **Brand Rate of duty drawback –** It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under rule 6. The manufacturer has to submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations as explained in MF(DR) circular No. 82/98-Cus dated 29-10-1998.

   Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2- 2006).

C. **Special Brand Rate of duty drawback –** All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services are higher than All Industry Rate fixed for his product. In such case, he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export. The conditions of eligibility are (*a*) the All Industry Rate fixed should be less than 80% of the duties paid by him (*b*) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than ₹500 (*c*) export value is not less than the value of imported material used in them – i.e. there should not be 'negative value addition'.

Question 10.

(a) Z Ltd. Collected following sums (exclusive of taxes) -

(1) Transport of passengers on vessel from Chennai to Port Blair : ₹ 6 lakh;

(2) Transport of passengers by vessels from Chennai to Dubai : ₹ 40 lakhs (services of ₹ 6 lakh was provided after crossing maritime zones of India);

(3) Transport of passengers by vessels from Dubai to Chennai : ₹ 50 lakhs (services of ₹ 7 lakh were provided after crossing maritime zones of India);

(4) Transport of passengers by stage carriage : ₹ 10 lakh;

(5) Transport of passengers by contract carriage : ₹ 5 lakh;

(6) Transport of passengers by contract carriage for tour : ₹ 6 lakh;

(7) Transport of passengers by ropeway: ₹ 2 lakh;

(8) Running cruise ships : ₹ 6 lakh (within territorial waters of India);

(9) Metro transport of passengers : ₹ 140 lakhs;

(10) Transport through national waterways: ₹ 8 lakh.

Compute taxable value.

(b) A Ltd., purchased a machine at a cum-duty price of ₹ 17,97,760. The excise duty rate charged on the said machine was 12% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2012 and was disposed of one 30-9-2014 for a price of ₹ 10,00,000 in working condition as second hand machine.

- **Calculate the amount of CENVAT credit allowable for the financial years 2012-13 and 2013-14 and**
- **Also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2013-14.**

Answer:

(a) Computation of taxable value —

(1) Transport of passengers on vessel from Chennai to Port Blair: ₹ 6 lakh – Covered within negative list under section 66D(o), as transport by vessels takes place within

India. It is assumed that vessel is not predominant meant for tourism purpose – Not taxable;

(2) Transport of passengers by vessels from Chennai to Dubai: ₹ 40 lakhs (services of ₹ 6 lakh was provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Chennai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Chennai. Hence, whole of the sum will be taxable in India.

(3) Transport of passengers by vessels from Dubai to Chennai: ₹ 50 lakhs (services of ₹ 7 lakhs were provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Dubai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Dubai. Hence, whole of the sum will be not be taxed in India;

(4) Transport of passengers by stage carriage : ₹ 10 lakh – Covered within negative list under section 66D(o);

(5) Transport of passengers by contract carriage : ₹ 5 lakh – Exempt;

(6) Transport of passengers by contract carriage for tour : ₹ 6 lakh – Not exempt, as meant for tour purposes – Taxable;

(7) Transport of passengers by ropeway : ₹ 2 lakh – Covered within negative list under section 66D(o);

(8) Running cruise ships: ₹ 6 lakh (within territorial waters of India) – Cruise ships are predominantly meant for turism purposes, hence, not covered within negative lit – Taxable;

(9) Metro transport of passengers : ₹ 140 lakh – Covered within negative list under section 66D(o);

(10) Transport through national waterways: ₹ 8 lakh – Covered within negative list u/s 66D(o).

Taxable Value = 40 + 6 + 6 = ₹ 52 lakhs.

(b)

Part I – CENVAT Credit allowable [Rule 4(2)(a) and 4(2)(b)]:

[Total Duty paid = ₹ 17,97,760 x 12.36% ÷ 112.36% = ₹ 1,97,760	**F.Y. 2012-13**	**F.Y. 2013-14**
50% credit in year of receipt and balance in subsequent year	98,880	98,880
Date of taking credit	01-07-2012	01-04-2012

Part II – Computation of amount payable under Rule 3(5A)

	Date of taking credit is 1-7-2012 only	**Date of taking credit is 1-7-2012 for 50% and 1-4-2013 for bal. 50%**	
		For first 50%	**For balance**
Credit taken = 50% of ₹ 1,44,200	1,97,760	98,880	98,880
Date of taking credit	01-07-2012	01-07-2012	01-04-2013
Date of removal	30-09-2014	30-09-2014	30-09-2014
No. of quarters of part thereof	9	9	6
Percentage eligible @ 2.5% for every quarter	22.50%	22.50%	15.00%
Credit reversible [100% - Percentage eligible]	77.50%	77.50%	85.00%
Amount to be paid=Credit Taken x % Reversible	1,53,264	76,632	84,048
Limit I = Total amount payable as about	1,53,264		1,60,680
Limit II = Value ₹ 10 lakh x Duty i.e., 12.36%	1,23,600		1,23,600
Amount payable under Rule 3(5A) = Higher of	1,53,264		1,60,680

Limit I or Limit II			

Question 11.

(a) State the various types of forms under CST.

(b) What are the basic conditions for levy of duty under section 3 of Central Excise Act?

Answer:

(a) The following are the forms under CST:

Form A	(i) This form is prescribed for application to get registered u/s 7 of CST Act. (ii) Details such as name, status, place of business, warehouses, nature of business, nature and purpose of goods to be dealt, goods to be bought from outside the state etc., are required to be furnished. (iii) Care should be taken to list the goods sought to be bought from outside the state and the purposes for which they are proposed to be utilized as the benefit of Form C is restricted to the goods and end use listed only.
Form B	(i) Certificate of registration shall be issued by the authority in this form. (ii) The certificate of registration should be kept in the principal place of business and copies thereof in the branches inside the appropriate state.
Form C	(i) Form C is used by a purchasing dealer to get the goods at confessional rate of duty and is issued in favour of the dealer who affects interstate sale. (ii) Registered dealers are entitled to certain exemptions under CST Act, 1956. (iii) It contains particulars such as name of purchasing dealer, sales tax registration no., its validity, details of goods obtained (whether for resale, manufacture, processing or as packing material), name and address of the seller etc. (iv) It is obtained from the sales tax authorities in the state in which the purchasing dealer is registered.
Form EI, EII & EIII	(i) In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C issued by his customer and by submitting Form E-1, issued by his seller. (ii) Form, E-I, E-II & E-III etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. (iii) Form E-II & E-III will have to be issued, in case there are more than one subsequent sale.
Form F	(i) F form is required to be produced as proof of stock transfer. As per section 6A(1) submission of F form is mandatory to prove stock transfer. Otherwise, the transaction will be treated as sale for all purposes of CST Act. (ii) F Form is issued by the branch office/consignment agent receiving goods as branch/stock transfer to its head office/principal who is sending the goods by way of stock/ branch transfer. The H.O./Principal produces such F forms to its assessing authority to prove such stock/branch transfer.
Form G	(i) These forms are issued by the sales tax authorities of the concerned

	state where the goods are received. (ii) It contains the name of the issuing state, date of issue, name and address of consignee and his registration no., name and registration no. of the transferor, description of goods, quantity, weight value etc. (iii) The declaration shall be signed by the authorized signatory.
Form H	(i) This form is used by the exporters who purchase the goods for the purpose of export. (ii) The actual exporter shall issue a certificate to the penultimate seller in Form H. (iii) These forms are obtained from the sales tax authorities by the exporter. (iv) Form H contains the name of the issuing state, date of issue name and address of exporter and his registration no., name and registration no. of the selling dealer, description of goods, quantity, weight, value details of export etc.

(b) To attract excise duty, the following conditions must be fulfilled:

- There should be movable goods;
- The goods must be excisable;
- The goods must be manufactured or produced; and
- The manufacture or production must be in India.

Goods manufactured or produced in SEZ are "excluded excisable goods". This means, that the goods manufactured or produced in SEZ are "excisable goods" but no duty is leviable, as charging section 3(1) excludes these goods. Thus, the goods manufactured in SEZ are not "exempted goods". They can be termed as "excluded excisable goods".

As per explanation to section 2(d), 'goods' includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable'.

Question 12.

(a) Define 'dealer' as per CST Act, 1956.
(b) Give the details of the periodic returns under Central Excise.
(c) What are the roles are played by Cost Accountant under VAT?

Answer:

(a) As per Sec 2(b) -'Dealer' means any person

(i) who carries on (whether regularly or otherwise), the business of

(ii) buying, selling, supplying or distributing goods, directly or indirectly,

(iii) for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following:

A. A Local Authority, a Body Corporate, a Company, any Co-operative Society or other Society, Club, Firm, HUF or Other Association of Persons which carries on such business.

B. A Factor, Broker, Commission Agent, Del-credre Agent, or any other Mercantile Agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and

C. An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

(b) All assesses are required to file returns mandatorily through e-filing, irrespective of the payment of excise duty w.e.f 01-10-2011. The forms of returns are as under:

Form of return	Description	Assessee	Time Limit
ER-1	Monthly	Manufacturer	10th of the following month from the end of the relevant month.
ER-2	Monthly	EOU	10th of the following month from the end of the relevant month.
ER-3	Quarterly	SSI	10th of the following month from the end of relevant quarter w.e.f. 1.4.2010
Annexure 13B	Quarterly	First Stage Dealer (or) Second Stage Dealer	15th of the following month from the end of the relevant quarter.
ER-4	Annual Financial Information Statement	Duty paid including CENVAT Credit ₹100 lakhs in the previous year.	Annually by 30th November of next year.
ER-5	Information relating to principal inputs statement	Duty paid including CENVAT Credit ₹100 lakhs in the previous year.	Annually by 30th April for the current year.
ER-6	monthly input and output	Assessee who submits form ER-5	10th of the following month from the end of the relevant month.
ER-7	Annual Installed Capacity Statement	By every assessee	30th April of the succeeding Financial Year
ER-8		An assessee is availing the exemption under N.T. 1/2011 dt. 1-3-2011 namely paying duty @1% or 2% as the case may be and does not manufacture any other products.	10th of the following month from the end of relevant quarter. For the year end quarter 31st March.

(c) Cost Accountants have the following key role to play in proper implementation of VAT:

(i) Record keeping: VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilization is necessary for the dealer to take input tax credit. No doubt, Cost Accountants are well equipped to perform these activities.

(ii) Tax planning: Cost Accountant is competent to analyze various alternatives and its impact on dealer so as to minimize the tax impact.

(iii) Negotiations with suppliers to reduce price: VAT credit alters cost structure of goods supplied as inputs. A Cost Accountant will ensure that the benefit of such cost reduction is passed on by the suppliers to his company.

(iv) Helping to departmental officers: There will be audit wing in department and certain percentage of dealers will be taken up for audit every year on scientific basis. Cost Accountant can ensure proper record keeping so as to satisfy the departmental auditors.

(v) External audit of VAT records: Under VAT system, self assessment has been brought into force. Cost Accountants can play a very vital role in ensuring tax compliance by audit of VAT accounts.

As per the Bombay High Court in the case of Sales Tax Practitioners Association of Maharashtra v State of Maharashtra (2008), has held that VAT audit can be conducted only by Chartered Accountants and Cost Accountants.

Question 13.

(a) "The amount of service tax is based on the Point of Taxation." — Write about point of taxation (Rule 3) in the context of service tax.

(b) State the taxable event of Central Sales Tax, Value Added Tax, Service Tax, Excise Duty, Customs Duty.

(c) A controversy has arised as to classification of Coconut oil. Is it (i) Hair oil (ii) Edible Oil (iii) Pure Coconut Oil or Coconut Oil? Advice.

Answer

(a) The point of taxation defines the point in time when a service shall be deemed to have been provided. It has impact on determination of rate of tax, as normally the rate of tax shall apply as prevailing on the date when service shall be deemed to have been provided. The Government of India has introduced the Point of Taxation Rules, 2011 to remove the disputes about applicability of the rate of tax and for ascertainment of the Point of Taxation.

Determination of point of taxation (Rule 3):

(i) Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service (w.e.f. 1-4-201 2).

(ii) Date of completion of the provision of service or payment, whichever is earlier if the invoice is not issued within the prescribed period as state in rule 4A of the Service Tax Rules, 1994.

w.e.f. 1-4-2012, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to

service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

(b) The taxable events are:

Tax/Duty	Taxable Event
Central Sales Tax	Purchase or sale in the course of inter-state sale (i.e. from one state to another state)
Value Added Tax	Purchase or sale in the course of intra-state sale (i.e. within a state)
Service Tax	Destination based, service is taxable only if provided in India, except whole of Jammu & Kashmir
Excise Duty	Production or manufacture of excisable goods in India (except goods manufactured or produced in Special Economic Zones in India)
Customs Duty	Importation of goods into India or exportation of goods from India

(c) Classification of Coconut oil is based on End user test vide Circular No.890/10/2009 – CX dated 03.06.3009. It refers to coconut oil sold with the indications on the containers or the labels such as
(i) Hair oil;
(ii) Edible Oil;
(iii) 'Pure Coconut Oil' or 'Coconut Oil'.

(i) If the 'Coconut Oils' are sold with the label "Hair Oil" meant for retail sale, they are classified under the heading "hair oil" * Heading no.3305+;
(ii) If the coconut oil sold with the label "Edible Oil"/ "Pure Coconut or Coconut Oil" meant for retail sale:
- If such oil is sold in small packs i.e. 50ml/100 ml/200ml – classify as "Hair oil" only (Chapter 33), since majority of customers use as Hair oil
- If such oil is sold in larger packs for e.g. 1 litre or 2 litres – classify as "Edible Oil" (Chapter 15), since majority of customers use as Edible oil.

Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product.

Question 14.

(a) State the cases where goods move from one state to another but do not amount to interstate sales.

(b) What is Resale Price Method (RPM) in computation of Arm's Length Price? State the adjustments required in the case of Resale Price Method where it is not possible to compare the transactions even by comparing with the transactions entered by the third party and that the differences have a material effect on price?

Answer:

(a) The following are the cases where goods move from one state to another but do not amount to interstate sales:

(i) A movement of goods from one state to another will not amount to interstate sales unless the seller had the responsibility to deliver the goods outside that state or the movement was as a result of a covenant or incident of contract of sale;
(ii) Stock transfer between head office & branch office will not amount to interstate sales as the basic elements of sale i.e., the presence of a buyer & seller; consideration & transfer of ownership etc. are not present;
(iii) Sale or purchase in the course of Export/ Import does not attract levy of CST since these have been specifically covered u/s 5 of the CST Act, 1956;
(iv) Sale through commission agent / on account sales will not amount to interstate sales as the agent only acts on behalf of the seller and he does not acquire any ownership of the goods. The agent is only entitled to receive commission on the sales effected by him and will also get re-imbursement of the expenses incurred by him.

(b) The RPM is a direct method which comprises the gross margins (i.e. gross profit over sales) earned in transactions between related and unrelated parties for the determination of the arm's-length price. The RPM method requires high level of functional comparability and is mainly applicable where the controlled party is a distributor.

The required adjustment to Resale Price Method (RPM):

(1) **Inventory adjustment**: An adjustment to operating income for ratios other than the ROA is necessary if a comparable company has a different relative level of inventory holding than the tested party. The inventory adjustment thus estimates the implicit capital cost of holding inventory.

(2) **Accounts payable adjustment:** This adjustment eliminates the implicit interest in the price of goods purchased on other than a cash basis from suppliers. The purpose of this adjustment is to identify and eliminate from profit comparisons the effect of companies' decisions on how to finance purchases.

(3) **Accounts receivable adjustment:** This adjustment eliminates the implicit interest in the price of goods or services sold on other tan cash basis to customers. The purpose of this adjustment is to identify and eliminate the profit related to finance decisions of the seller. A company selling on cash basis would receive a lower price than a company selling the goods on terms, because selling on terms subjects the seller to a capital cost that will be reflected in the price.

(4) **Contractual terms**: where the contractual terms includes the provisions like warranties, terms of credit, facilities for transportation and transshipment of goods, facilities related to quantity of purchase or sale of goods.

(5) **The level of the market:** The adjustments also consider the level of the market, i.e. wholesale, retail, etc.

(6) **Foreign currency adjustments:** In case of an export transaction, the foreign exchange loss because of depreciation of the USD is disadvantageous to the exporter and it results in lower margin. The comparable companies having domestic sale transactions will be having higher margin. If the tested party imports raw material from foreign company, being an associated enterprise, it will be exposed to foreign exchange risk. The comparable companies using raw material procured from India will not be exposed from this risk. If the comparable companies hedge, the forex risk

using financial instruments adjustment for the same is required for the tested party which does not perform the hedging.

Question 15.

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

(b) List the characteristics of Indirect Taxes.

Answer:

(a) 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 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.

(b) The following are the characteristics of Indirect Taxes:

(1) Meaning: Indirect Tax is a tax where incidence and impact fall on two different person.

(2) Nature of tax: Indirect Taxes are regressive in nature.

(3) Taxable Event: Purchase / Sale / Manufacture of goods and provision of services.

(4) Levy & Collection: Indirect taxes are levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.

(5) Shifting of Burden: Tax burden is shifted on the subsequent / ultimate user.

(6) Collection: Indirect Taxes are collected at the time of sale or purchases or rendering of services.

Question 16.

(a) What are the specified services where the place of provision is the location of the service provider?

(b) Describe the procedures to be followed in clearance of goods imported by post.

(c) Your client company is a subsidiary of a foreign company, having its registered office in India. This company has transaction of imports of raw materials and components and also exports of its manufacture components from & to holding company in Finland and also other group companies in South East Asian countries. What are income tax regulations governing such international transactions?

Answer:

(a) Following are the specified services where the place of provision is the location of the service provider:-

i) Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;

ii) Online information and database access or retrieval services;

iii) Intermediary services;

iv) Service consisting of hiring of means of transport, up to a period of one month.

(b) The procedures to be followed in clearance of goods imported by post:

(1) **Procedure on receipt of parcel mail**: Post master has to handover details regarding parcels received along with parcel bills to the Appraiser.

(2) **Scrutiny & Detention of dutiable/prohibited articles**: The parcels are scrutinised and those suspected to contain dutiable or prohibited articles are detained and presented to customs appraiser.

(3) **Segregation**: Parcels are segregated into: (1) Assessable on basis of label; (2) Assessable after opening of packet; and (3) Assessable only after further inquiry.

(4) **Assessment**: The parcels shall be assessed based on label or based on examination or after calling requisite information. The rate of duty, value, etc. shall be determined. Such duty is recovered by the postal authorities from the addressee at the time of delivery and sum is credited to Customs Department.

(5) **Evasion/Prohibition cases**: In case of mis-declared, undervalued or prohibited goods, the parcel/packet is detained and not allowed to be cleared, except with order of the Customs] Officer.

(c) Computation of income from international transaction having regard to arm's length price [Section 92]:

(1) Income to be computed as per ALP: Any income arising from an international transaction shall be computed having regard to the arm's length price.

Expense or interest also to be determined at ALP: The allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price (ALP).

(2) Allocation/apportionment of common costs shall be done having regard to the ALP: Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or,

as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(3) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

(4) Provisions of ALP not to apply if it results in reduction of income/increase of losses: The provisions shall not apply in a case where the computation of income or the determination of the allowance for any expense or interest or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed, has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.

Question 17.

(a) After visiting Canada, Mrs. & Mr. B brought to India a laptop computer valued at ₹85,000, personal effects valued at ₹90,000 and a personal computer for ₹78,000. What is the customs duty payable?

(b) Distinguish between a Sale for Export and Sale in the Course of Export in the context of Central Sales Tax.

Answer:

(a)

1. **Exemption:** Personal Effects and One Laptop are exempt from duty.
2. **General Free Allowance**: The General Free Allowance for the Passenger's of Age ≥ 10 years, and returning after stay abroad of > 3 days is ₹ 35,000. [Rule 3 of Baggage Rules, 1998]
3. **Rate**: Rate of Duty applicable for Baggage = 35% + EC @ 2% + SHEC @ 1% =36.05%
4. **Duty**: Duty payable on Baggage = ₹ (78,000 - 35,000) x 36.05% = ₹ 15,502.

(b) Distinctions between a Sale for Export and Sale in the Course of Export

Sale for Export	Sale in the Course of Export
i. A sale effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently.	Seller has an express between the sale and the export.
ii. Seller may or may not have the knowledge that the buyer intends to export the goods purchased.	The seller who purchases goods in India subsequently exports as such.
iii. Seller does not know the ultimate destination of the goods he has sold.	Seller has clear address for ultimate destination of his goods.
iv. Seller has no intention for export.	Seller has clear intention to export.
v. This sale may be called as penultimate sale.	This sale is called as export sale.
vi. Sale exempted from CST provided Form 'H' received from his buyer.	Sale exempted from CST automatically.
vii. This sale is covered under Section 5(3) of the CST Act, 1956.	This sale is covered under Section 5(1) of the CST Act, 1956.

Question 18.

(a) Define Similar Goods as per Rule 2(1)(f) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(b) List the salient features of Anti-Dumping Duty.

Answer:

(a) Rule 2(1)(f) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 define 'similar goods' as *(a)* alike in all respects, have like characteristics and like components and perform same functions. These should be commercially inter-changeable with goods being valued as regards quality, reputation and trade mark. *(b)* the goods should have been produced in the same country in which the goods being valued were produced. *(c)* they should be produced by same manufacturer who has manufactured goods undervaluation - if price of such goods are not available, price of goods produced by another manufacturer in the same country can be considered.

However, if engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be 'similar goods'.

(b) The salient features of Anti-Dumping Duty:

i. It is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry

ii. It provides relief to the domestic industry against the injury caused by dumping and gives domestic industry a level playing field.

iii. The duty is imposed as a deterrent effect to discourage dumped imports, so that users can buy material from domestic industry from whom they were not buying earlier on account of availability of cheap dumped imports.

iv. The idea is to levy and collect extra tax, rather to take the landed value of imports to a level where domestic industry can fairly compete with imports and sell the product in the domestic market.

Question 19.

(a) State with reasons whether service tax will be levied or not on the interest in relation to overdraft, cash credit, bill discount or exchange in the region of Banking and financial services.

(b) Define Coastal Goods and Customs Area as per Customs Act.

(c) Describe the benefits in case of supply to EOUs (Export Oriented units) from DTA (Domestic tariff Area) units?

Answer:

(a) In the context of Banking and other financial instructions, the Hon'ble Tribunal in State Bank of Indore v. CCE 2011 (23) STR 346 (Tri) held that interest in relation to overdraft, cash credit, bill discount or exchange was exempted under Notification No. 29/2004-ST, dated

22.09.2004. The mere fact that the bank did not show separately in the invoice the interest is not very factual to avail the exemption in view of the fact that the assessee, the banking company was regulated by RBI guidelines and public norm requires disclosure of bank's earning, Therefore, the Tribunal held that subject to the appellant adducing evidence as required by the Notification, the matter should stand remanded to the adjudicating authority for passing appropriate order.

(b) Coastal Goods [Section 2(7) of the Customs Act]: The term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

Customs Area [Section 2(11) of the Customs Act]: Customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

(c) The benefits of Supply to EOUs (Export Oriented units) from DTA (Domestic tariff Area) units:

1. **Deemed Export:** Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "Deemed Exports". The DTA Supplier shall be eligible for relevant entitlements under the FTP, besides discharge of export obligation, if any, on the Supplier. Also, the EOU/ EHTP/ STP/ BTP units shall, on production of a suitable disclaimer from DTA Supplier, be eligible for obtaining entitlements specified under the provisions relating to deemed exports in FTP. For claiming deemed export duty drawback, they shall get brand rates fixed by the DC, wherever All Industry Rates of Drawback are not available.
2. **Additional Benefits:** In addition, EOU/ EHTP/ STP/ BTP units shall be entitled to following:
   - (i) Reimbursement of Central Sales Tax (CST) on goods manufactured in India. Interest at 6% will be payable on delay refund of CST, if the case is not settled within 30 days of receipt of complete application.
   - (ii) Exemption from payment of Central Excise Duty on goods procured from DTA on goods manufactured in India.
   - (iii) Reimbursement of duty paid on fuel procured from Domestic Oil Companies/ Depots of Domestic Oil Public Sector Undertakings as per Drawback Rate notified by DGFT from time to time. Reimbursement of Additional Duty of Excise levied on fuel under the Finance Acts would also be admissible.
   - (iv) CENVAT Credit on Service Tax paid.

Question 20.

(a) Write a note on Green Channel and Red Channel in customs.

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

Explain the following with reasons:

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

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

(iii) **The Central Excise Officer is demanding duty on the price of ₹ 15 lakhs at the time of sale to Mr. Sen. Is he right in his approach?**

(iv) **Does cost of production have any bearing on the assessable value?**

Answer:

(a) Section 77 of Customs Act provides that owner of any baggage has to make declaration of its contents to Customs Officer. Rate of duty and tariff valuation shall be the rate and valuation in force on the date of declaration.

Green Channel - It is impractical to ask every traveller to declare contents of his baggage. Hence, customs have provided two channels at airports. If a person does not have any dutiable goods, he can go through green channel.

Going through green channel is in effect declaring that the person is not carrying any dutiable goods. It is not necessary that declaration has to be in writing. It is not duty of Customs Officer to accost individual passenger. A person going through green channel carrying dutiable goods can be penalised for 'false declaration'.

Red Channel - Person carrying dutiable goods should pass through red channel and should submit declaration. The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but baggage can be inspected by Customs Officer.

(b) (i) The price prevailing at the time of removal from factory (i.e. ₹ 10 lacs on 15th June 2013 is the assessable value.

(ii) The applicable rate of duty is @12.36% and duty amount is ₹ 1,23,600 (i.e. ₹ 10 lacs x 12.36/100).

(iii) The Central Excise Officer is not right in his approach.

(iv) Cost of production has no bearing with assessable value in present case. Central Excise valuation can be below manufacturing cost. If price is the sole consideration and dealing between seller and buyer are arm's length, assessable value will be decided on the basis of selling price, even if it is below manufacturing cost. So cost of manufacturing will not change the assessable value.

Question 21.

(a) What are the essential ingredients of a sale under CST Act?

(b) Describe Doctrine of Unjust Enrichment?

(c) List out the powers of the DGFT (Director General of Foreign Trade).

Answer:

(a) Essential ingredients of a sale under CST Act:

i. There must be two parties to the contract of sale (i.e.) the buyer & the seller.

ii. There must be valid consent of both the above parties.

iii. There must be an actual transfer of property in goods (i.e. agreement to sell is not a sale).

iv. There must be a consideration in cash or in deferred payment or any other valuable consideration in money or money's worth.

v. Sale includes deemed sales but it does not include a mortgage or hypothecation of or a charge or pledge on goods.

(b) Doctrine of Unjust Enrichment: The doctrine of unjust enrichment means no person can be unjustly enriched at expense of another person. In indirect taxes, the duty/tax burden passes on to the person who ultimately consumes goods or services. Since the law authorises recovery of indirect taxes (excise duty, customs, sales/purchases tax) from buyer, therefore, it is always presumed that incidence of duty has been passed. Therefore, if any refund becomes due to the manufacturer, then, since manufacturer has recovered the duty from the buyer, thus, to be fair, refund should be made to consumer.
However, it is not possible to locate individual buyers and pay refund to them. Also without authority of law Government cannot retain the excess duty. Therefore, Section 11B has been introduced which provides that any refund due to an assessee shall be transferred to Consumer Welfare Refund and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the assessee only when he proves that incidence of duty has not been passed to any other person or in certain other specified cases..

(c) The powers of the DGFT (Director General of Foreign Trade):

1. **Interpretation of Policy:** If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT, whose decision thereon shall be final and binding.
2. **Procedure:** DGFT may specify the procedure to be followed by an Exporter or Importer or by any licencing or any other Competent Authority for the purpose of implementing provisions of Foreign Trade Act, the Rules and the Orders made thereunder and FTP. Such procedures shall be published in Hand Book of Procedures by means of a Public Notice, and may, in like manner, be amended from time to time.
3. **Exemption from Policy/Procedure:** DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.
4. **Scope of Restriction:** DGFT may, through a Notification, adopt and enforce any measure necessary for -
   a. Protection of -
      (i) Public morals.
      (ii) Human, animal or plant life or health.
      (iii) Patents, Trademarks and Copyrights and the prevention of deceptive practices.
      (iv) National treasures of artistic, historic or archaeological value.
      (v) Trade of fissionable material or material from which they are derived.

   b. Prevention of traffic in arms, ammunition and implements of war and use of prison labour.
   c. Conservation of exhaustible natural resources.

2. **Importer-Exporter Code (IEC):** DGFT is empowered to issue IEC. IEC is a unique 10 digit code issued by DGFT to Indian Companies. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

An application for IEC is to be made to the nearest RA of DGFT in the 'Aayaat Niryaat Form-ANF2A' and shall be accompanied by the prescribed documents. In case of STPI/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STPI unit is located, shall issue or amend the IECs.

Question 22.

(a) High Point Tender Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net VAT payable under the State VAT Law.

Sl. No.	Particulars	Amount (₹)
(i)	Total contract price (excluding VAT @12.5%)	3,60,00,000
(ii)	Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT)	67,50,000
(iii)	Labour charges paid for execution of the contract (VAT @12.5%)	80,00,000
(iv)	Other service charges paid for the execution of the contract (VAT @12.5%)	40,00,000
(v)	Cost of consumables used not involving transfer of property in goods (VAT @12.5%)	20,00,000

High Point Tender Constructions also purchased a plant for use in the contract for ₹ 41,60,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately. Assume 100% input tax credit is available on capital goods immediately.

(b) Write a short note on Central Excise Revenue Audit.

(c) Specify the scope of international transaction. Also mention the elements which are included in the Intangible property.

Answer:

(a) The question states that -

- contractor maintains sufficient records to quantify the labour charges;
- hence, value of transfer of property in goods involved in execution of works contract is to be computed by deducting labour and service charges from total contract price.

The computations in this regard are as follows -

	Value (excl. VAT) (₹)	VAT Rate	VAT(₹)
Total Contract Price	3,60,00,000		
Less: Labour charges (assumed inclusive of normal profit)	80,00,000		

Other service charges (assumed inclusive of normal profit)	40,00,000		
Cost of consumables (assumed inclusive of normal profit)	20,00,000		
Value of goods involved in works contract	**2,20,00,000**	**12.50%**	**27,50,000**
Materials purchased and used for contract (eligible for credit)[Value excluding VAT= ₹ 67,50,000 X 100 ÷ 112.5]	60,00,000	12.50%	7,50,000
Capital goods used for contract (eligible for credit; in fact, question itself states that capital goods are eligible for 100% credit) [Value excluding VAT= ₹ 41,60,000 X 100 ÷ 104]	40,00,000	4.00%	1,60,000
Net VAT payable in cash			**18,40,000**

(b) Central Excise Revenue Audit:

(i) It is conducted by the Comptroller and Auditor General of India (C & A G) it is called Central Excise Revenue Audit (CERA).

(ii) This is an audit of the Central Excise Department's functioning and is carried out at the office of the Central Excise Department.

(iii) This is not an audit of the assessee.

(iv) The audit focuses on ascertaining revenue leakage and is assessed on the basis of the periodical returns filed by the assessee, the execution of various bonds, and other relevant information such as cost audit reports, and income-tax audit reports of the assessee.

(v) The CERA auditor has the right to visit the office of the assessee though the audit is not of the assessee.

(vi) There is no defined frequency for the carrying out of this audit.

(vii) C & A G submits the report to the President of India, who causes these to be laid before each House of Parliament.

(c) Scope of international transaction:

"International transaction" shall include—

(i) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(ii) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(iii) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(iv) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(v) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

"Intangible property" shall include -

(i) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;
(ii) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;
(iii) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;
(iv) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;
(v) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;
(vi) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;
(vii) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;
(viii) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;
(ix) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;
(x) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;
(xi) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;
(xii) any other similar item that derives its value from its intellectual content rather than its physical attributes.

Question 23.

(a) XYZ Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2013-14, the total value of clearances from the unit was ₹600 lakhs.

The break up of clearances is as under :

i. Clearances worth ₹70 lakhs of certain non-excisable goods manufactured by it.
ii. Clearances worth ₹55 lakhs exempted under specified job work notification.
iii. Exports worth ₹ 125 lakhs (₹100 lakhs to USA and ₹ 25 lakhs to Nepal).
iv. Clearances worth ₹50 lakhs which were used captively to manufacture finished products that are exempt under notifications other than Notification No. 8/2003-CE., dated 01-03-2003 as amended.
v. Clearances worth ₹ 300 lakhs of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1-3-2003 as amended for the year 2014-15.

(b) Explain distinguishing features between provisions of 'pilferage' and 'loss or destruction of goods' under Customs Act.

Answer:

(a) In order to claim the benefit of SSI exemption in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year.

For this purpose, the total value of clearances shall be calculated as follows –

	(₹ lakhs)
Total value of clearances	600
Less:	
(i) Clearances of certain non-excisable goods manufactured by it	70
(ii) Clearances exempted under specified job-work notification	55
(iii) Exports clearances to USA	100
(iv) Clearances of goods used captively to manufacture finished products, which are exempt under Notification other than SSI-exemption notification	Nil
Value of clearances	**375**

Unit eligible for exemption: Since the aggregate value of clearances during the preceding financial year doesn't exceed ₹400 lakhs, therefore, the unit is eligible for SSI-exemption in the financial year 2014-15.

(b) Difference in sections 13 and 23 (1) of the Customs Act, 1962 can be summarized as follows :

Pilferage (Section 13)	**Loss or destruction of goods (Section 23)**
Pilferage means loss arising out of theft	Such loss may arise by fire, natural calamity etc.
Section 13 deals with pilferage	Section 23 (1) deals with loss or destruction of goods, except pilferage.
No duty is payable at all under section 13, but liability revives for duty if goods are restored.	Duty is payable under section 23 (1), but it may be remitted by Asst. Comm. Of Customs. Thus, unless remitted, duty has to be paid under section 23 (1)
Importer does not have to prove pilferage.	Burden of proof is on importer to prove loss or destruction.
Pilferage should be before order for clearance is made.	Loss or destruction can be at any time before clearance.
Loss must be only due to pilferage.	Loss or destruction may be due to fire, accident etc., but not pilferage e.g., loss by leakage is covered under section 23.
Under section 13, normally duty is not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance are made.	Under section 23 (1), if duty is paid, then refund can be obtained only if remission is granted by Customs Authorities. Thus, remission under section 23 (1) is at the discretion of Customs Authorities. [of

	course, the discretion has to be exercised judiciously].
Section 13 is not applicable for warehoused goods.	Section 23 (1) is applicable for warehoused goods also [As goods transferred to warehouse are not 'cleared for home consumption'].

Question 24.

(a) 'P' dispatches goods from Karnataka and raises invoice on 'Q' in Madhya Pradesh, P charge 2% CST and pays the same in Karnataka. During the course of movement of goods, Q sells goods to R in West Bengal and R ultimately sells goods to S in Kolkata. S takes delivery of goods and the movement of goods comes to end. Sales from Q to R and R to S are by transfer of lorry way bill receipts. Explain the forms to be issued so that the first and subsequent sales are exempt from central sales tax.

(b) Give the valuation aspects in relation to the central excise duty in the following cases —
  (i) Trade mark and
  (ii) Consultancy/technical services

Answer:

(a) 'P' will receive declaration in 'C' Form from Q and will issue declaration in E-I Form to Q.

Later, Q will issue declaration in E-II Form to R and receive declaration in 'C' Form from 'R'

Finally, R will issue declaration in E-II Form to S and receive declaration in 'C' Form from S, which will complete the chain. Because, S has taken the possession of goods, thereby movement of goods from one state to another ends.

If the chain is broken, CST will be payable again. Otherwise, all subsequent sales will be exempt from sales tax.

(b) (i) The value of trade mark and assessable value:

Where a manufacturer is the owner of the brand name, the price including the value of the brand name, at which he sells the goods in the course of wholesale trade, would constitute the normal price. But where the goods are manufactured by other manufacturer and then sold to a dealer who owns the brand name, the value of the brand name cannot be considered for computing the assessable value, as the brand name owner cannot be construed as manufacturer and the price at which the brand name owner sells the goods cannot be taken as assessable value.

(ii) Consultancy/technical services and assessable value:

The costs towards drawing, designing and technical specifications are clearly elements of machinery costs and are to be included in the assessable value. However, the cost towards project report, plant layout, civil works and training which are in the nature of services are not includible in the assessable value.

Question 25.

(a) Compute the customs duty payable from the following data:

Machinery imported from USA by air	**US $ 16,000**
Accessories compulsorily supplied with machine	**US $ 4,000**
Air freight	**US $ 6,000**
Insurance	**US $ 200**
Local agent's commission	**₹ 9,000**
Exchange rate	**1 US $ = ₹ 60**
Customs duty on machine	**10% ad valorem**
Customs duty on accessory	**20% ad valorem**
Additional duty of customs 12%, but effective rate by exemption notification	**8%**
Additional duty of customs under section 3(5) of Customs Tariff Act, 1975	**4%**
Education Cess + Secondary and Higher Education Cess	**2% + 1 %**

(b) What do you meant by Margin of Dumping and Injury Margin in the context of Anti-dumping Duty?

Answer:

(a) Computation of Customs duty payable

Cost of machinery inclusive of accessory (FOB) (See Note)	US$	20,000
Add : Cost of insurance	US$	200
Add: Air freight (restricted to 20% of FOB)	US$	4,000
Total	US$	24,200
Total (In Indian ₹) US$ 24,200 x ₹ 60 (being the exchange rate)	₹	14,52,000
Add : Agency commission	₹	9,000
CIF Value	₹	14,61,000
Add : Landing charges (@ 1% of CIF value)	₹	14,610
Assessable value	₹	14,75,610
Add : Basic Customs Duty (10% of assessable value) [A]	₹	1,47,561
Total for Additional duty of Customs leviable under section 3(1) Customs Tariff Act	₹	16,23,171
Add : Additional duty of Customs u/s 3(1) Customs Tariff Act equal to excise duty @ 8% [B]	₹	1,29,854
Add : Education cess and SHEC @ 3% of [A] + [B] [C]	₹	8,322
Total for Additional duty of Customs u/s 3(5) Customs Tariff Act	₹	17,61,347
Add : Additional duty of Customs u/s 3(5) Customs Tariff Act @ 4% [D]	₹	70,454
Total imported cost (rounded off)	₹	18,31,801
Total customs duty payable = [A] + [B] + [C] + [D] (rounded off)	₹	3,56,191

Working notes:

1. As per Accessories (Conditions) Rules, 1963, accessories and spare parts compulsory supplied with main implements are chargeable at the same rate as applicable to main machine. Therefore, such accessories shall also be chargeable with duty at the applicable to the machinery i.e. @ 10% ad valorem.
2. Though actual air freight is US $ 6,000, it is limited to 20% of FOB value of goods as per Rule 10(2) of Customs Valuation Rules.
3. Agency Commission, which is incurred in India, is not regarded as buying Commission and therefore will be added to determine the CIF value.

(b) Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price (price at which he is exporting the goods).

'Injury Margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.

Question 26.

(a) Compute the assessable value under the Central Excise Act, 1944 in the following case:

Production	**:**	**3,000 units on 01.01.2014**
Quantity sold	**:**	**950 units @ ₹ 260 per unit**
		1,050 units @ ₹ 240 per unit
Samples clearances	**:**	**50 units**
Balance in stock	**:**	**950 units (at the end of factory day for 01.01.2014)**

Assume that the rate per unit is exclusive of Central Excise duty.

(b) Write down the provisions of section 72 in relation to the Best Judgment Assessment under the Service Tax Law?

Answer:

(a) Computation of assessable value of the goods (amount in ₹)

Clearances of 950 units @ ₹ 260 per unit	2,47,000
Clearances of 1,050 units @ ₹ 240 per unit	2,52,000
Samples clearances of 50 units @ ₹ 240 per unit [WN]	12,000
Transaction Value	5,11,000

Working note:

CBEC Circular No. 813/10/2005-CX, dated 25.04.2005 has clarified that Sample are to be valued as per provisions of Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 i.e. on the basis of value of goods cleared at or around the same time.

However, since the information relating to value of goods sold at the time nearest to the time of removal of samples is not available, valuation may be done on the basis of Rule 11 read with Rule 4. Therefore, normal transaction value of goods sold at or about the time nearest to the time of removal of samples will be the assessable value of the samples. Normal transaction value is the value at which the greatest aggregate quantity of goods is sold. Since, in the given case, the greatest aggregate quantity viz., 650 units are sold at ₹ 190, the normal transaction value would be ₹ 190.

(b) Best judgment assessment [Section 72 of Finance Act, 1994] [Circumstance when best judgment assessment can be made]: Section 72 provides that best judgment assessment can be done by the Central Excise Officer if, —

(i) the assessee fails to furnish the return under section 70;

(ii) the assessee having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder.

Manner of making best judgment assessment: For making best judgment assessment, the Central Excise Office may require the assessee to produce such accounts, documents or other evidence as he may deem necessary an after taking into account all the relevant material, the Central Excise Officer shall make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by, or refundable to, the assessee. He shall pass the order in writing, after giving an opportunity of being heard to the assessee.

Question 27.

(a) Determine the Point of Taxation in each of following independent cases in accordance with point of Taxation Rules, 2011.

S. No.	Date of actual provision of service	Time [date] of Invoice, Bill or Challan as the case may be	Date on which payment received
1	10.06.2013	30.06.2013	06.06.2013 (part) and 16.06.2013 (remaining)
2.	10.06.2013	12.07.2013	30.06.2013
3.	10.06.2013	12.07.2013	05.06.2013 (part) and 25.06.2013 (remaining)
4.	10.06.2013	22.07.2013	12.08.2013

(b) What is the condition for levy of Specific Safeguard Duty u/s 8C of Customs Tariff Act?

(c) Compute the 'arm length price' (ALP) in the following cases :

(i) X Ltd. is a 100% Indian subsidiary of a US company. The parent company sells one of its products to the Indian subsidiary at a price of US$ 150 per unit. The same product is sold to unrelated buyers at a price of US$ 175 per unit.

(ii) The US parent company sells the same product to an unrelated company in India @ US$ 130 per unit.

Answer:

(a) Point of Taxation for the different cases:

S. No.	Date of completion of service	Time [date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
1.	10.06.2013	30.06.2013	06.06.2013 (part) and 16.06.2013 (remaining)	06.06.2013 and 16.06.2013 for the respective amounts	Invoice issued within 30 days. Part payment (in the form of advance received before issue of invoice and remaining payment received after completion of service)
2.	10.06.2013	12.07.2013	30.06.2013	10.06.2013	Invoice not issued within 30 days and payment received after completion of service
3.	10.06.2013	12.07.2013	05.06.2013	05.06.2013	Invoice not issued within 30

			(part) and 25.06.2013 (remaining)	and 10.06.2013 for the respective amounts	days. Part payment received as advance before completion of service and remaining payment received subsequently
4.	10.06.2013	22.07.2013	12.08.2013	10.06.2013	Invoice not issued within 30 days and entire payment received after completion of service

(b) Condition for levy of Specific Safeguard Duty u/s 8C of Customs Tariff Act — If Central Government conducting such enquiry as it deems fit, is satisfied that any article is imported into India from People's Republic of China:
— in such increased quantity, and
— so as to cause or threatening to cause, market disruption to domestic industry.

(c) Computation of 'arm length price (ALP) is as follows –
(i) Though the ALP is ₹ 175 per unit; however, since the adoption of ALP will result in decrease in total income of Indian subsidiary (the cost of purchase being higher), therefore, the price of US$ 150 per unit shall be admissible.
(ii) However, in this case, the ALP = Price to unrelated buyers = US$ 130 per unit; and since its adoption increases taxable income in India, hence, the same shall be adopted.

Question 28.
(a) Specify the relevant dates for warehouse goods in the following cases:
(i) Rate of exchange, when goods are removed for home consumption;
(ii) Rate of duty, when goods are removed for home consumption;
(iii) Goods deemed to be improperly removed u/s 72 of the Customs Act, or, Rate of duty if the goods are not removed from warehouse within the permissible period.

(b) Describe the taxability of 'bundled services'.

Answer:
(a) The relevant dates for warehoused goods in the following cases will be:

Warehoused goods (Case)	Relevant date
1. Rate of exchange, when goods are removed for home consumption	**Date of presentation of bill of entry for warehousing** : As per section 14 of the Customs Act, rate of exchange shall be rate in force on the date on which bill of entry for warehousing is presented u/s 46 of the Customs Act, shall be applicable.
2. Rate of duty, when goods are removed for home consumption	**Date of presentation of bill of entry for home consumption**: As per section 15(1)(b) of the Customs Act, the rate of duty in force on the date on which ex-bond bill of entry for home consumption (removal of goods from warehouse for home consumption) is filed

	under section 68, shall be applicable.
3. Goods deemed to be improperly removed u/s 72, or, Rate of duty if the goods are not removed from warehouse within the permissible period	**Date on which goods are deemed to be improperly removed, or, date of expiry of warehousing period**: In case of goods deemed to be improperly removed u/s 72 of the Customs Act, the relevant date for determination of rate duty shall be the date of such deemed removal i.e., the date on which any of the events listed in section 72 occurs. For example, in case goods continue to remain in warehouse after expiry of period u/s 61, then, rate of duty in force on date of expiry of such period shall be applied. Section 15(l)(b) cannot apply, as it applies only when goods are removed u/s 68 properly.

(b) 'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Example - A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

Question 29.

(a) ZBL Ltd. of Mumbai (having diversified business) has provided the following services, whose values are listed below. Compute its service tax liability :

- **(i) Services provided to a company located in Colombo in relation to organization of a sport event in Colombo : ₹ 22 lakhs**
- **(ii) Services provided to a company located in Srinagar in relation to festival celebration on Srinagar : ₹ 6 lakhs**
- **(iii) Services provided to a company located in Jaipur in relation to fashion show in Dubai : ₹ 24 lakhs**
- **(iv) Services of online database access and retrieval services provided from its website : ₹ 25 lakhs (out of this, ₹ 18 lakhs was provided to recipients located outside India)**

(b) Are Lease Transactions subjected to levy of Value Added Tax under VAT Legislations? State with reasons.

Answer:

(a) The taxable value and service tax is computed below (amount in ₹)

(i)	Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax	Nil
(ii)	Services provided to a company located in Srinagar in relation to organization of a sport event in Srinagar: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax	Nil
(iii)	Services provided to a company located in Jaipur in relation to fashion show in Dubai: Since services are in relation to event held in Dubai, hence, as per Rule 6, they are not taxable. But, since the services are provided to a recipient located in taxable territory (Jaipur) and both service provider and recipient are located in taxable territory, hence, as per Rule 8, these services are liable to service tax.	24,00,000
(iv)	Services of online database access and retrieval services provided from its website: As per Rule 9, the place of provision is the place of location of service provider. Since, service provider ZBL Ltd. is located in Mumbai (taxable territory), hence, these services will be taxable in full irrespective of location of the service recipient.	25,00,000
	Total Taxable Value	49,00,000
	Service tax @ 12.36%	6,05,640

(b) Levy: The Constitutional Authority to levy Sales Tax / VAT on Lease Transactions is contained in Article 366 of Constitution of India, which provides that tax on sale or purchase includes "a tax on the transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration."

Taxable Event: Transfer of right to use any "goods" for any purpose for a "valuable consideration". Hence, transfer of assets without consideration and lease of Immovable property does not attract levy of VAT / Sales Tax.

Taxable Turnover:

= Amount of Valuable Consideration Paid or Payable during given period + Any Charges before delivery thereof, (Less) Interest / Finance Charges included in Lease Payments (only in some States)

Input Tax Credit:

(i) Lessor's Books:

- Lessor will collect VAT on Lease Rentals over a period of time. Against such VAT Liability, the Lessor can claim Input Tax Credit of VAT Paid on purchase of the leased asset.
- Some States provide for claiming of Input Tax Credit on such purchases only over the lease period, and not against any other VAT liability.

- Some other States provide for complete utilization of Input Tax Credit on such purchase, against any VAT Liability. Some other States provide an option to carry forward the excess credit.

(ii) Input Tax credit on Capital Goods: Assets given on lease will be generally capitalized by the Lessor in his books, and will be treated as Capital Assets. Hence, provision relating to Input Tax Credit on Capital Goods will apply, i.e. utilization of credit over a period of time such within 36 Months etc.

Question 30.

(a) An importer, having received 100 casks of whisky from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1000 litres. At the time of removal of goods, it is found that 50 cases contained only 980 litres each. The importer claims that there has been a loss in storage and hence no duty can be levied on the shortage. Explain the relevant provisions of the Customs Act, 1962 regarding shortage of volatile goods and state, with reasons, how would you decide the case.

(b) Is transfer of property in goods without consideration chargeable to CST?

Answer:

(a) The duty payable on 15 litres per case found deficient will be remitted u/s 70, as whisky (wine/beer) is notified goods u/s 70, the loss is found at the time of delivery from warehouse and loss of mere 1.5% per cask appears to be a natural loss.

(b) Sale u/s 2(g) of the CST Act means transfer of property for cash or deferred payment or for any other valuable consideration. Where there is transfer of property in goods without consideration, it does not amount to sale within the meaning of the definition under the act and therefore CST is not attracted.

Question 31.

(a) Why indirect taxes are called regressive in nature as against direct taxes?

(b) M/s. Z Ltd. received the following sums (exclusive of taxes). Compute its service tax liability (Ignore small service provider's exemption)-

(1) Commission from selling of various goods belonging to other parties : ₹ 15 lakh ;

(2) Commission from acting as Clearing and Forwarding Agent: ₹ 8 lakh ;

(3) Commission from acting as clearing agent: ₹ 6 lakh ;

(4) Commission from acting as forwarding agent: ₹ 9 lakh ;

(5) Margin earned from trading in shares : ₹ 5 lakh ;

***(6)* Margin from trading in futures : ₹ 8 lakh ;**

Answer:

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

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

(b) Computation of service tax liability:

(1) Commission from selling of various goods belonging to other parties : ₹15 lakh - Taxable;
(2) Commission from acting as Clearing and Forwarding Agent: ₹ 8 lakh - Taxable;
(3) Commission from acting as clearing agent: ₹ 6 lakh - Taxable;
(4) Commission from acting as forwarding agent: ₹ 9 lakh - Taxable;
(5) Margin earned from trading in shares : ₹ 5 lakh - Shares are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not taxable;
(6) Margin from trading in futures: ₹ 8 lakh - Futures are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not taxable;

Taxable Value = 15+8+6 + 9 = ₹ 38 lakh; and service tax thereon @ 12.36% = ₹ 4,69,680.

Question 32.

(a) RD Hotels Pvt. Ltd has given the following information for period Oct. 2013 to March, 2014. Compute value of taxable services and tax thereon:

(1) Reception room and vehicle parking space were let out for a film shooting for 3 months. The charges received for this ₹ 7 lacs.
(2) Conference hall was let out to a Marwari Samaj Trust for a week for a music competition for ₹ 70,000.
(3) The hotel was booked by a customer for 3 days for a marriage function. The room booking charges were received in advance (excluding service tax) in the said period of ₹ 40,000. The electricity charges separately billed ₹ 10,000, hire charges including catering charges (including food) for 3 days billed of ₹ 4,05,000 after deducting the advance.
(4) During the year, the conference hall was let out to Pk Ltd. The charges received were as under :
Hall rent ₹ 3.50 Lacs, computer & projector systems charges ₹ 35,000, electricity charges ₹ 20,000. Hall rent includes charges for snacks and cold drinks ₹ 60,000.
(5) The hotel garden was let out to a political party for 2 days for a meeting. Charges received ₹ 20,000. The hotel charges 10% service charges which are later distributed as tips to employees. The above charges are excluding service tax.

(b) What is ACES (Automation of Central Excise and Service Tax)? State the usefulness of ACES.
(c) State the objectives of the Foreign Trade Policy? Write down its features also.

Answer:

(a) Computation of value of taxable service including tax thereon (ignoring small service provider exemption) -

[Service charges form part of gross amount charged: 10% services charges are assumed to have been charged in addition to aforesaid sums and since they are a consideration for provision of service, they are liable to included in gross amount charged.]

	Particulars	₹
1.	Reception room and vehicle parking space were let out for a film shooting for 3 months - It is renting of immovable property service - Since it is not meant for residential or lodging purposes, hence, no abatement allowed - Taxable [₹ 7 lakh + 10% Service Charges]	7,70,000
2.	Conference hall was let out to a Gujarati Samaj Trust for a week for a music competition -Taxable; it is renting of immovable property [₹ 70,000 + 10% service charges]	77,000
3.	Bundled service of provision food including renting of premises is eligible for abatement under Notification No. 26/2012-ST @ 30%. Total amount = ₹ 40,000 + ₹ 10,000 + ₹ 4,05,000 = ₹ 4,55,000 + 10% service charges = ₹5,00,500. Taxable Value @ 70% of ₹ 5,00,500 will be -	3,50,350
4.	Bundled service of provision food/beverages including renting of premises is eligible for abatement under Notification No. 26/2012-ST @ 30%. Total amount = ₹ 3,50,000 + ₹ 35,000 + ₹ 20,000 = ₹ 4,05,000 + 10% service charges = ₹ 4,45,500. Taxable Value @ 70% of ₹ 4,45,500 will be-	3,11,850
5.	Hotel garden was let out to a political party - It is renting of immovable property - Taxable [₹ 20,000 + 10% service charges]	22,000
	Taxable Value	15,31,200
	Service Tax @ 12.36%	1,89,256

(b) The Central Board of Excise & Customs (CBE & C) has developed a new software application called *Automation of Central Excise and Service Tax (ACES),* which aims at improving tax-payer services, transparency, accountability and efficiency in indirect tax administration.

It is a centralized, web based software application which automates various processes of Central Excise and Service Tax for Assessees and Department, and gives complete end to end solution.

ACES can be used for:

i. Online registration and amendment of registration details
ii. Electronic filing of documents such as Returns, Claims, Intimations and permissions
iii. Online tracking of the status of applications, claims and permissions
iv. Online facility to view documents like Registration Certificate, Returns, Show Cause Notice, Order- In-Original etc.

(c) Objective: The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The earlier trade policies were based on the objectives of self-reliance and self-sufficiency.

Features of Foreign Trade Policy:

(i) Export-Import is free unless specifically regulated by the Policy or any other law for the time being in force.

(ii) There are restrictions on exports and imports for various strategic, health, and other reasons. If the goods are not banned, the Government can give a permission/license for specific reasons.

(iii) Exports are promoted through various promotional schemes.

(iv) There should be no taxes on exports and hence, the taxes are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).

(v) Even Capital Goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.

(vi) For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU.

(vii) In certain cases, imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

Question 33:

(a) Define the term Assessment Year & Previous Year under Income Tax Act, 1961?

(b) Under which cases Assessment year and Previous year is same?

Answer (a):

Assessment Year [Section 2 (9)]

Assessment Year means the period of twelve months commencing on the 1st day of April every year.

It relates to the previous year for which the income is assessed to tax.

The present Assessment Year is 2014-15 relating to Previous Year 2013-14.

Previous Year [Section 3]

"Previous Year" means the Financial Year immediately preceding the Assessment Year.

The year in respect of the income of which tax is levied is called Previous Year.

The present Previous Year 2013-14 and its Assessment Year is 2014-15.

Note : Previous Year for newly established business from the date of setting up of the business to the end of the Financial Year in which business was set up.

Answer (b):

Previous year & Assessment year will be same in the following cases :

1. Shipping business of nonresident [Section 172]

2. Persons leaving India [Section 174]
3. AOP or BOI or Artificial Juridical Person formed for a particular event or purpose [Section 174A]
4. Persons likely to transfer property to avoid tax [Section 175]
5. Discontinued business [Section 176]

Question 34:

(a) Compute Income for Mr. Roy for the Previous Year 2013-14.

	Particulars	₹
(i)	Salary accrued and received in India	60,000
(ii)	Profit from hotel business in Japan	1,20,000
(iii)	Dividends declared in Japan received in India	30,000
(iv)	Gain from transfer of capital asset in India	70,000
(v)	Interest on Debentures of a company in New York received in India	38,000
(vi)	Royalty received in Germany from a resident in India for technical services provided for a business in Germany	40,000
(vii)	Interest received in UK from Mr. Robert, a non-resident, on loan provided to him for business in India	12,000
(viii)	Fees from an Indian company carrying on business in the UK for technical services rendered in London, directly deposited in his bank account in India	50,000

Compute the Gross Total Income Mr. Roy for the relevant Previous Year 2013-14, if he is (a) Ordinarily Resident, (b) Not Ordinarily Resident, (c) Non Resident.

(b) Mr.X furnishes the following particulars of his income earned during Previous Year 2013-14:

(i) Income from agriculture in Bangladesh, received there ₹ 4,80,000, but later on remitted to India.

(ii) Interest on Pakistani Development Bonds, ₹ 1,90,000, one-sixth of which received in India.

(iii) Gift of ₹ 1,70,000 received in foreign currency from a relative in India.

(iv) Arrears of salary ₹ 2,50,000 received in Pakistan from a former employer in India.

(v) Income from property received outside India ₹ 4,00,000 (₹2,00,000 is used in Bahrain for the educational expenses of his son in Bahrain, and ₹ 3,00,000 later on remitted to India).

(vi) Income from business in Iran which is controlled from India (₹2,00,000 being received in India) ₹3,00,000.

(vii) Dividends received on 30.06.2013 outside India from an Indian company, ₹ 3,50,000.

(viii) Untaxed profit of the FY 2007-2008 brought to India in July 2013, ₹ 3,50,000.

(ix) **Profit from business in Kolkata managed from outside India ₹ 2,00,000, 60% of which is received outside India.**

Determine the Gross Total Income of Mr. X for Previous Year 2013-2014, if Mr. X is (a) Resident and Ordinarily Resident; (b) Resident but not Ordinarily Resident; (c) Non Resident.

Solution (a):

Computation of Gross Total Income of Mr. Roy for the Previous Year 2013-2014

Particulars	ROR	RNOR	NR
(a) Salary accrued and received in India	60,000	60,000	60,000
(b) Profit from hotel business in Japan	1,20,000	—	—
(c) Dividends declared in Japan received in India	30,000	30,000	30,000
(d) Gains from transfer of a capital asset in India deemed to accrue or arise in India	70,000	70,000	70,000
(e) Interest on debentures of a company in New York but received in India	38,000	38,000	38,000
(f) Royalty received in Germany from a resident in India for technical services provided for a business in Germany	40,000	—	—
(g) Interest received in UK from Mr. Robert, a non-resident, on loan provided to him for business in India	12,000	12,000	12,000
(h) Fees from an Indian company, carrying on business in UK for technical services rendered in London, directly deposited in his Bank Account in India	50,000	50,000	50,000
Gross Total Income	**4,20,000**	**2,60,000**	**2,60,000**

Solution (b):

Computation of Gross Total Income for the Previous Year 2013-14

Particulars	ROR	RNOR	NR
(i) Income from agriculture in Bangladesh, received there but later on remitted to India	4,80,000	-	-
(ii) Interest on Development Bonds in a foreign land :			
(a) 1/6th of ₹ 1,90,000 received in India	31,667	31,667	31,667
(b) 5/6th of ₹ 1,90,000 being received in India	1,58,333	-	-
(iii) Gift received from a relative in India is exempted u/s 57(v)	-	-	-
(iv) Salary arrears received in Pakistan from a former employer in	2,50,000	2,50,000	2,50,000

India			
(v) Income from property received outside India but later on remitted to India	4,00,000	-	-
(vi) Profit from a business in foreign land but controlled from India			
(a) Profits received in India	2,00,000	2,00,000	2,00,000
(b) Profits received outside India	2,00,000	2,00,000	-
(vii) Dividends received from an Indian Company, outside India, deemed to accrue or arise but exempted u/s 10(34)	-	-	-
(viii) Untaxed foreign profit of 2007-08 brought to India	-	-	-
(ix) Profit from business in India ₹2,00,000, 60% of which was received outside India	2,00,000	2,00,000	2,00,000
Gross Total Income	**19,20,000**	**8,81,667**	**6,81,667**

Question 35:

(a) Amal Kumar, an Indian citizen, is posted in the Indian High Commission at Nairobi during the Previous Year 2013-14. His emoluments consist of Basic Pay of ₹2,50,000 per month and overseas allowance of ₹ 70,000 per month. Besides, he is entitled to & from journey to India and also use Government's car at Nairobi. He has no taxable income except salary income stated above.

Compute tax liability if he is a non-resident during the Previous Year 2013-14.

(b) A, is entitled to a basic salary of ₹ 20,000 p.m. and dearness allowance of ₹ 4,000 p.m., 40% of which forms part of retirement benefits. He is also entitled to HRA of ₹ 8,000 p.m. He actually pays ₹ 8,000 p.m. as rent for a house in Delhi. Compute the taxable HRA.

Solution (a):

(1) U/s 9(1)(iii), Salary paid by the Government of India to an Indian citizen for services rendered outside India is deemed to accrue or arise in India and is therefore taxable in India.

(2) U/s 10(7), allowances or perquisites paid by the Government of India to an Indian citizen or services rendered outside India, is fully exempt from tax.

(3) **Computation of Gross Salary for the Previous Year 2013-14**

Particulars	Amount (₹)	Amount (₹)
Salary : ₹ 2,50,000 x 12 months		30,00,000
Add: Overseas allowance ₹70,000 x 12 months	8,40,000	
Less: Exemption u/s 10(7)	8,40,000	Nil

Gross Salary		**30,00,000**
Less: Deduction u/s 16		Nil
Income under the head Salaries		**30,00,000**

Computation of Tax Liability

Particulars	Amount (₹)	Amount (₹)
Upto ₹ 2,00,000	Nil	
₹ 2,00,001 to ₹ 5,00,000 = @ 10% of ₹ 3,00,000	30,000	
₹ 5,00,001 to ₹ 10,00,000 = @ 20% of ₹ 5,00,000	1,00,000	
₹ 10,00,001 to ₹ 30,00,000 = @ 30% of ₹ 20,00,000	6,00,000	7,30,000
Tax (excluding cess)		**7,30,000**
Add: Education Cess @ 2%		14,600
Add: Secondary and Higher Education Cess @ 1%		7,300
Tax Liability (including Cess)		**7,51,900**

Solution (b):

Salary for House Rent Allowance = Basic Pay + D.A. (considered for retirement benefits) + Commission (if received as a fixed percentage on turnover as per terms of employment) = (20,000 × 12) + (40% × 4,000 ×12) = 2,59,200

Computation of Taxable House Rent Allowance

Particulars	₹	₹
Amount received during the financial year for HRA		96,000
Less: Exemption u/s 10(13A) Rule 2A		
Least of the followings:		
(a) Actual amount received	96,000	
(b) 50% of Salary of ₹ 2,59,200	1,29,600	
(c) Rent paid less 10% of Salary [8,000 × 12 - 10% of ₹ 2,59,200]	70,080	70,080
Taxable House Rent Allowance		**25,920**

Question 36:

(a) Mr. Smart was retrenched from service of Hungry Ltd. The scheme of retrenchment is approved by the Central Government. Retrenchment compensation received ₹ 12 lakhs. What is the taxability?

(b) Mr. Rahul Khanna is employed with HUD Co. Ltd. @ ₹ 50,000 p.m. He is the owner of a house property construction of which was completed on 1st April 2004. Since then, it has been in his self-occupancy for residential purposes. The particulars in respect of the house for financial year 2013-2014 are given below :

Municipal Valuation	**₹3,00,000**
Municipal tax paid	**₹30,000**
Ground rent outstanding	**₹10,000**
Insurance premium paid	**₹6,000**

Interest on loan, taken on 1-6-2012 for renovation of the house, is ₹ 95,000 for the year 2013-2014. However, he could pay only, ₹ 45,000 during the year. He is transferred in February 2014 to the Nagpur Branch of the Company. He intends to allow his sister to occupy the house free of rent in his absence. He seeks your advice in this connection. Compute his total income for AY 2014-2015.

Solution (a):

When retrenchment compensation is received in accordance with any scheme, which is approved by the Central Government, it is fully exempted from tax.

Solution (b):

Computation of Total Income

Assessee : Mr. Ranjit Sinha **A. Y : 2014-15**

Particulars	**Case I House kept vacant (₹)**	**Case II House is occupied by his sister in his absence (₹)**
Income from House Property :		
Gross Annual Value	Nil	3,00,000
Less : Municipal taxes paid	Nil	(-) 30,000
Net Annual Value	Nil	2,70,000
Less : Permissible deduction (Sec. 24)		
(i) Statutory deduction – 30% of Net annual value	Nil	(-) 81, 000
(ii) Interest on loan for renovation	(-) 30,000	(-) 95,000
Income from House Property	(-) 30,000	94,000
Statement of Total Income :		
Income from Salary	6,00,000	6,00,000
Income from House Property	(-) 30,000	94,000
Total Income	5,70,000	6,94,000

Advise : From tax angle it is not advisable to allow his sister to occupy the house in his absence.

Question 37:

(a) Mr. L is the owner of a commercial property let out at ₹ 40,000 p.m. The Municipal tax on the property is ₹ 25,000 annually, 60% of which is payable by the tenant. This tax was actually paid on 15.4.2014. He had borrowed a sum of ₹ 30 Lakhs from his cousin, resident in USA (in dollars) for the construction of the property on which interest at 8% is payable. He has also received arrears of rent of ₹ 60,000 during the year, which was not charged to tax in the earlier years. What is the Property Income of Mr. L for A.Y. 2014-15?

(b) Will the provision of section 40A(3) be attracted in the following cases:

(i) R purchases goods worth ₹30,000 from G against one bill but makes payment of ₹18,000 & ₹12,000 at different times on the same date.

(ii) R makes a payment of ₹40,000 as donation by cheque to National Defence Fund.

(iii) R makes a purchase of goods of ₹60,000 and makes payment of ₹ 45,000 by account payee cheque and ₹ 15,000 in cash.

(iv) R makes a purchase of goods of ₹60,000 on 14.2.2014 and makes the payment as under:

(I) ₹ 30,000 by account payee cheque on 15.2.2014,

(II) ₹ 15,000 in cash on 15.2.2014,

(III) ₹15,000 in cash on 16.2.2014.

(v) R purchases a building for ₹10,00,000 and makes the payment in cash.

(vi) R, a dealer in real estate purchases buildings for ₹10,00,000 and makes the payment by crossed cheque.

Solution (a):

Assessee : Mr. L **Previous Year : 2013-2014** **Assessment Year : 2014-15**

Computation of Income from House Property

Particulars	₹	₹
Let Out : So, Annual Value u/s 23(1)(a)/(b) = Actual Rent = ₹ 40,000×12		4,80,000
Less : Municipal Taxes Paid during the F.Y. 2013-14		NIL
Net Annual Value		**4,80,000**
Less : Deduction u/s 24		
- 30% of NAV - ₹ 4,80,000 × 30%	1,44,000	
- Interest on Housing Loan (Note) ₹ 30,00,000 × 8%	2,40,000	(3,84,000)
Income from House Property before considering Arrears of Rent		**96,000**
Arrears of Rent Received	60,000	
Less : Deduction u/s 25B - 30% of Arrears received - ₹ 60,000 × 30%	(18,000)	42,000
Net Income from House Property		**1,38,000**

Note : It is presumed that the tax has been deducted at source on the amount of interest payable outside India.

Solution (b):

(i) Section 40A(3) shall be applicable and ₹ 30,000 shall be disallowed.

(ii) Section 40A(3) shall not be applicable. As donation is not allowable as deduction under section 30 to 37 but allowable under section 80G from GTI.

(iii) Section 40A(3) is not applicable.

(iv) Section 40A(3) is not applicable.

(v) No, section 40A(3) is not applicable for purchase of a capital asset.

(vi) Entire ₹10,00,000 shall be disallowed as payment is not by account payee cheque.

Question 38:

(a) Compute the taxable income of a Chamber of Commerce from the following data.

	1 ₹	2 ₹	3 ₹
Gross receipts for specific services rendered to members	**2,60,000**	**2,60,000**	**2,60,000**
Expenses incurred in connection with the above	**60,000**	**1,10,000**	**2,00,000**
Interest on bank deposits	**40,000**	**40,000**	**80,000**
Receipt from members	**2,00,000**	**3,00,000**	**2,60,000**
Expenditure incurred on members	**1,50,000**	**4,10,000**	**3,50,000**

(b) X Airlines incorporated as a company in USA operates its flights to India and vice versa during the previous year 2013-14 and collects charges of ₹1,25,00,000 for carriage of passengers and cargo out of which ₹65,00,000 were received in US dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹1, 95,00,000. Compute the income chargeable to tax of the foreign airlines.

Solution (a):

Profit and gains of business and profession			
Net income from rendering specific services (Gross receipts-Expenses)	2,00,000	1,50,000	60,000
Less: Deficiency set off (maximum to the extent of 50% of total assessable income before set off of deficiency i.e. ₹1,90,000 and ₹1,40,000 in case of 2 and 3 respectively)	---	95,000	60,000
(A)	2,00,000	55,000	Nil
Interest on bank deposit under other heads	40,000	40,000	80,000
Less: Deficiency although allowable upto 50% of total assessable income which could not be set off against business income			10,000
Income (B)	40,000	40,000	70,000
Gross Total Income (A + B)	2,40,000	95,000	70,000
Less: Deduction under sections 80C to 80U	Nil	Nil	Nil
	2,40,000	95,000	70,000

Note:-
1. Surplus of ₹ 50,000 under case 1 is not taxable as it is from mutual activity.
2. Deficiency under case 2 and 3 would not have been allowed but for the benefit given under section 44A.
3. Assessable income in case of 2 and 3 is as under:

	Case I ₹	Case II ₹
Surplus from specific services	1,50,000	60,000
Interest income	40,000	80,000
	1,90,000	1,40,000
Less: Under section 80C to 80U	Nil	Nil
	1,90,000	1,40,000

4. In case 3, 50% of the assessable income is ₹70,000 (i.e. 50% of ₹1,40,000) but first it will be set off from business income which in this case is ?60,000 and the balance shall be set off from other income.

Solution (b):

As per section 44BBA, in case of an Airlines the income is presumed to be 5% of the following:
(i) the amount paid or payable (whether' in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India, and
(ii) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Hence, the taxable income will be determined as under:

	Passenger fare booked from Mumbai to New York whether paid in India or not ₹	Passenger fare booked from New York to Mumbai if received in India ₹
Fare	60,00,000	65,00,000
Taxable income	3,00,000	3,25,000

Note—If the passenger fare booked from New York to Mumbai in not received in India, then such fare shall not be included for calculating presumptive income.

Question 39:

(a) Ramesh owns a residential house which was purchased by him in 1975 for ₹1,05,000. The FMV as on 1.4.81 was ₹ 3,00,000. This house is sold by him on 16.7.2013 for a consideration of ₹ 25,00,000. The brokerage and expenses on transfer was ₹ 25,000. Compute Capital Gains for the Assessment Year 2014-15.

If he invests ₹ 8,00,000 for purchase of a new house on 15.3.2014.

If the HP so purchased in 15.3.2014 is again sold in 21.10.14 for ₹ 12 lacs, what will be the tax liability?

(b) Suman acquired shares of G Ltd. on 15.12.99 for ₹6 lacs which were sold on 14.6.13 for ₹ 18 lacs. Expenses on transfer of shares ₹ 30,000. He invests ₹ 10 lacs in the bonds of Rural Electrification Corporation Ltd. on 16.10.2013.

(i) Compute Capital Gain for the Assessment Year 2014-15.

(ii) State the period for which the bonds should be held by the assessee. What will be the consequences if such bonds are sold within the specified period?

(iii) What will be the consequences if Suman takes a loan against the security of such bonds?

Solution (a):

Computation of Capital Gains for the A.Y. 2014-15

Particulars	₹
Consideration for transfer	25,00,000
Less : Expenses on transfer	25,000
Net Consideration	**24,75,000**
Less : Indexed Cost of Acquisition 3,00,000 x $\frac{939}{100}$	28,17,000
Long Term Capital Loss	**3,42,000**
Less : **Exemption u/s 54**	
Cost of New HP Purchased ₹ 8,00,000	
(exemption restricted upto the balance of LTCG)	NIL
Taxable Long Term Capital Loss	**3,93,000**

If the HP purchased in 15.3.2014 is again sold on 21.10.14 for ₹ 12 lacs, there arise Short Term Capital Gain. The cost of acquisition shall be adjusted to the extent of Long Term Capital Gain exemption already availed.

Computation of Capital Gains for the A.Y. 2015-16

Particulars	₹	₹
Consideration for transfer		12,00,000
Less : **Cost of Acquisition**		
Cost of purchase	8,00,000	
Less : Exemption u/s 54 availed during A.Y. 2014-15 now withdrawn	NIL	8,00,000
Short Term Capital Gains		**4,00,000**

Solution (b):

(i) Computation of Capital Gains for the A.Y. 2014-15

Consideration for transfer	18,00,000
Less : Expenses on Transfer	30,000
Net Consideration	17,70,000
Less : **Indexed Cost of Acquisition** 6,00,000 × $\frac{939}{389}$	14,48,329
Long-term Capital Gains	3,21,671
Less : **Exemption u/s 54EC Taxable**	3,21,671
Long-term Capital Gain	NIL

(ii) Suman should not transfer or convert (otherwise than transfer) into money such bonds within 3 years from the date of their acquisition.

If these bonds are transferred or converted into money within 3 years, Capital Gain of ₹3,21,671 exempted earlier shall attract taxability towards Long-term Capital Gain of the Previous Year in which such asset is transferred or converted into money.

(iii) If any loan is taken against security of such bonds, it shall be taxable as Long-term Capital Gains of the Previous Year in which such loan is taken against the security of such bonds.

Question 40:

(a) Dharmendra received the following gifts during the year ending 31.03.2014:
(i) ₹ 80,000 from her elder sister.
(ii) ₹ 90,000 from the daughter of her elder sister.
(iii) ₹ 2,25,000 from various friends on the occasion of her marriage,
Discuss the taxability or otherwise of these gifts in the hands of Dharmendra.

(b) Discuss the taxability of Family Pension.

Answer (a):

(i) ₹ 80,000 received from elder sister, is not taxable, as elder sister is a relative.
(ii) ₹ 90,000 received from the daughter of her elder sister, is taxable, as the donor, in this case, is not a relative as per the definition of the Act.
(iii) ₹ 2,25,000 is not taxable as it is received on the occasion of her marriage.

Answer (b):

Family pension means pension received by the family members of the deceased employee. It is chargeable to tax under the head 'Income from Other Sources'. Deduction u/s 57: Least of the following is allowed as a deduction -
(i) 33 1/3 % of gross pension
(ii) ₹ 15,000

Exemptions :

(i) Family pension received by family members of Army personnel who are recipient of gallantry awards [Section 10(18)].

(ii) Family pension received by the widow or children or nominated heirs of a member of the armed forces (including para-military forces) whose death has occurred in the course of operational duties [Section 10(19)].

Question 41:

(a) Dhoni had placed a deposit of ₹ 20 Lakhs in a bank on which he received interest of ₹1,60,000. He had also borrowed ₹ 8 Lakhs from the same bank on the security of the deposit and was liable to pay ₹ 80,000 by way of interest to the bank. He therefore offered the difference between two amounts of ₹ 80,000 as Income from Other Sources. Is this correct?

(b) Mr. Kholi gets the following gifts during the Previous Year 2013-2014.

	Date of Gift	Name of the Donor	Amount of Gift (₹)
1.	01.07.2013	Gift from R, a friend, by cheque	1,00,000
2.	01.09.2013	Cash gift from N, nephew	2,00,000
3.	01.12.2013	Gift of diamond ring on his birthday, by a friend, C	1,50,000
4.	15.12.2013	Cash gifts of ₹62,000 each made by four friends on the occasion of his marriage	2,48,000
5.	21.12.2013	Cash gift made by wife's sister on house opening ceremony	1,02,000
6.	15.01.2014	Cash gift from a close friend of father-in-law.	3,02,000
7.	31.01.2014	Cash gift made by great-grandfather	3,02,000
8.	01.02.2014	Cash gift received under the Will of a friend, who is seriously ill.	3,30,000
9.	15.02.2014	Cash gift made by a business friend on his birthday	1,02,000
10.	31.03.2014	Cash gifts made by three friends of ₹50,000 each	1,50,000

Besides this, Kholi is engaged in the business of sale and purchase of retail goods.

He maintains no account books. Gross turnover from retail trading is ₹ 65,00,000. Compute his total income for the Assessment Year 2014-2015.

Solution (a):

U/s 57, any expenditure (not being capital expenditure) expended to earn income chargeable under the head "Income from Other Sources" will be allowed as deduction against such income.

Interest on Bank FD was the income in the hands of the assessee and the interest on the loan taken from bank on that deposit is not an allowable expenditure.

Therefore, in the given case, the interest of ₹ 80,000 paid by Dhoni is not allowable as deduction, and the entire interest of ₹ 1,60,000 is fully taxable.

Solution (b):

Computation of Taxable Income for the AY 2014-2015

Particulars	Amount (₹)
1. Income from retail trading business [Sec. 44 AD] 8% ₹ 65,00,000	5,20,000
2. Income from Other Sources (money gifts):	
(i) Cash gift from a friend, by cheque	1,00,000
(ii) Cash gift from nephew, not covered by the definition of relative	2,00,000
(iii) Gift of diamond ring — Jewellery gift taxable	1,50,000
(iv) Cash gifts on the occasion of marriage are not chargeable even if such gifts are made by unrelated persons	--
(v) Cash gift made by wife's sister, a relative, not taxable	--
(vi) Cash gift by a friend of father-in-law, unrelated person	3,02,000
(vii) Cash gift made by great-grand father, a relative	--
(viii) Cash gift received under Will in contemplation of death of a friend	--
(ix) Cash gift made by a business friend on his birthday	1,02,000
(x) Cash gifts, made by three friends, of ₹50,000 each	1,50,000
Total Income	**15,24,000**

Question 42:

(a) Mr. Khan, out of his own funds, had taken a FDR for ₹ 2,00,000 bearing interest @ 10% p.a. payable half-yearly in the name of his wife Dipika. The interest earned for the year 2013-2014 of ₹20,000, was invested by Mrs. Dipika in the business of packed spices which resulted in a net profit of ₹1,10,000 for the year ended 31st March, 2014. How shall the interest on FDR and income from business be taxed for the Assessment Year 2014-2015?

(b) Discuss whether the loss could be set-off in the following case:
Smt. Baid carried on business with the gifted funds of her husband Mr. Dabur. For the Previous Year ending 31.3.2014, Baid incurred loss of ₹7 lakh which Dabur wants to set-off from his taxable income.

Solution (a):

Where an individual transfers an asset (excluding house property), directly or indirectly to his/her spouse, otherwise than for adequate consideration, or in connection with an agreement to live apart, income from such asset is included in the total income of such individual [Sec. 64(1)(iv)].

Accordingly, interest on FDR, accruing to wife, is included in the total income of her husband. However, business profits cannot be clubbed with total income of husband. Clubbing applies only to the income from assets transferred without adequate consideration. It does not apply to the income from accretion of the transferred assets. Hence, business profit is taxable as the income of wife.

Solution (b):

Funds for business were gifted by husband to wife. Accordingly, income from business should be clubbed with the income of husband [Sec. 64(1)(iv)].

"Income" includes "loss" also. Hence, husband is entitled to set-off the business loss of wife against his taxable income.

Question 43:

(a) Mr. Nandi discloses the following incomes for the Previous Year 2013-2014:

House Property ₹	Business or Profession		Capital Gains		Income from Other Sources
	Speculation ₹	Non-speculation ₹	STCG ₹	LTCG ₹	
A 75,000	**P 4,50,000**	**X 7,50,000**	**C 9,00,000**	**F 10,50,000**	**Family pension 1,42,500**
B (-) 60,000	**S (-)3,00,000**	**Y (-) 4,50,000**	**D (-) 4,50,000**	**E (-)7,50,000**	**Loss from (-) 75,000 letting out from machinery/plant**

Determine income under head of income for the A. Y. 2014-2015.

(b) A discloses the following incomes from business or profession for the Previous Year 2013-2014:

		₹
(i)	**Proft from A business**	**7,00,000**
(ii)	**Loss from B business**	**(-) 3,00,000**
(iii)	**Loss from profession C**	**(-) 3,50,000**
(iv)	**Proft from speculation business – P**	**3,00,000**
(v)	**Loss from speculation business – Q**	**(-) 4,00,000**

Determine the Income from Business or Profession for the Assessment Year 2014-2015.

Solution (a):

Aggregation of income under each head of income: A. Y. 2014-2015

House Property ₹	Business or Profession		Capital Gains		Income from Other Sources ₹
	Speculation ₹	Non-speculation ₹	STCG ₹	LTCG ₹	
A 75,000	P 4,50,000	X 7,50,000	C 9,00,000	F 10,50,000	Family pension 1,42,500

B (-)60,000	S (-)3,00,000	Y (-)4,50,000	D (-)4,50,000	E (-)7,50,000	Loss from letting out machinery/ plant	(-) 75,000
15,000	1,50,000	3,00,000	4,50,000	3,00,000	67,500	

Solution (b):

Income from Business or Profession for the AY 2014-2015

Particulars	₹
(i) A	7,00,000
(ii) B	(-) 3,00,000
(iii) C	(-) 3,50,000
Total Income from Non Speculation Business and Profession	50,000
Income from Speculation Business	
(i) P	3,00,000
(ii) Q	(-)4 ,00,000
Loss from Speculation Business	(-) 1,00,000

Speculation loss cannot be set-off against the income from business profit, though both of them fall under the same head of income.

Thus, taxable business profits for the Assessment Year 2014-2015 is ₹ 50,000. The speculation loss will be carried forward for future set-off for 4 assessment years, immediately succeeding the Assessment Year for which it was first computed [Sec. 73(4)].

The time-limit of 4 years is applicable from the Assessment Year 2015-2016 and subsequent year.

Question 44:

(a) Mr. Alok a senior citizen, owns a property consisting of two blocks of identical size. The first block is used for business purposes. The other block has been let out from 1.4.2013 to his cousin for ₹ 30,000 p.m. The cost of construction of each block is ₹ 6 lacs (fully met from bank loan), rate of interest on bank loan is 10% p.a. The construction was completed on 31.3.2013. During the year ended 31.3.2014, he had to pay a penal interest of ₹ 5,000 in respect of each block on account of delayed payments to the bank for the borrowings. The normal interest paid by him in respect of each block was ₹ 62,000. Principal repayment for each block was ₹33,000. An identical block in the same neighbourhood fetches a rent of ₹ 35,000 per month. Municipal Tax paid in respect of each block was ₹ 15,000.

The income from business prior to adjustment towards depreciation on any asset is ₹ 3,20,000. He follows Mercantile System of Accounting. Depreciation on equipments used for business is ₹ 40,000.

On 23.2.2014, he sold shares of B Ltd., a listed share in BSE for ₹ 2,50,000. The share had been purchased 10 months back for ₹ 1,90,000. Security transaction tax paid may be taken as ₹250.

Brought forward business loss of a business discontinued on 12.1.2011 is ₹ 1,00,000. This loss has been determined in pursuance of a return of income fled in time and the current year is the seventh year.

The following payments were affected by him during the year :

- **LIP of ₹ 24,000 on his life and ₹ 15,000 for his son aged 22, engaged as a software engineer and drawing salary of ₹ 25,000 per month.**
- **Mediclaim premium of ₹ 8,000 for himself & ₹ 5,000 for above son. The premiums were paid by cheque.**

You are required to compute the Total Income for the Assessment Year 2014-15. The various heads of income should be properly shown. Ignore the interest on bank loan for the period prior to 1.4.2013, as the bank had waived it.

(b) B Ltd. grows sugarcane to manufacture sugar. The data for the fnancial year 2013-14 is as follows :

Cost of cultivation of sugarcane	**₹ 6,50,000**
Market value of sugarcane when transferred to factory	**₹10,50,000**
Other manufacturing cost	**₹ 6,50,000**
Sales of sugar	**₹ 28,00,000**

Salary of Managing Director who looks after all operations of the Company ₹ 4,00,000

Determine its Business Income and Agricultural Income.

Solution (a):

Computation of Total Income of Mr. Ashok for A.Y. 2014-15

Particulars	**Amount ₹**	**Amount ₹**	**Amount ₹**
(1) **Income from House Property (Let out)**			
Gross Annual Value (being Fair rent)		4,20,000	
Less: Municipal Tax		15,000	
Net Annual Value (NAV)		4,05,000	
Less: Deduction:-			
u/s 24(a) Standard Deduction (30% of NAV)	1,21,500		
u/s 24(b) Interest on loan	62,000	1,83,500	2,21,500
(2) **Profits and Gains of Business or Profession**			
Net Profit before depreciation		3,20,000	
Less: Expenditure allowed but not debited in P & L Account			
Depreciation on equipment	40,000		
Depreciation on building i.e. 10% of ₹ 5,00,000	60,000	1,00,000	
Profits and Gains of Business or Profession of current year		2,20,000	
Less: Brought forward losses set off u/s 72		1,00,000	1,20,000

(3) **Capital Gains**			
Consideration for Transfer		2,50,000	
Less: Cost of acquisition		(1,90,000)	
Short Term Capital Gains			60,000
Gross Total Income			4,01,500
Less: Deduction u/s			
80C: LIC Premium paid	39,000		
Repayment of bank loan	33,000	72,000	
80D: Medical insurance premium		8,000	80,000
Total Income			**3,21,500**

Notes :

1. Penal interest is not allowed u/s 24(b)
2. It has been assumed that interest, municipal tax on property used for business have already being charged while computing "Business Income Before Depreciation" i.e. ₹3,20,000.
3. STT is not allowed as expenditure on transfer.

Solution (b):

(1) **Business Income :**

Sales of Sugar	₹28,00,000
Less: Market value of sugarcane when transferred to factory	₹10,50,000
Other manufacturing cost	₹ 6,50,000
Salary of Managing Director	₹ 4,00,000

(2) **Agricultural Income :**

Market value of sugarcane when transferred to factory	₹10,50,000
Less: Cost of cultivation	₹ 6,50,000

Question 45:

(a) Mr. Q has estates in Rubber, Tea and Coffee. He has also a nursery wherein he grows plants and sells. For the Previous Year ending 31.3.2014, he furnishes the following particulars of his sources of income from estates and sale of Plants. You are requested to compute the taxable income for the Assessment Year 2014-2015:

Manufacture of Rubber	**₹7,00,000**
Manufacture of Coffee grown and cured	**₹4,50,000**
Manufacture of Tea	**₹8,00,000**
Sale of Plants from Nursery	**₹2,00,000**

(b) The following particulars are furnished for the Previous Year 2013-14

	₹
Net Proft as per Proft & Loss A/c (after deducting Depreciation of ₹ 6,80,000)	**90,97,000**
Depreciation allowable u/s 32 of Income Tax Act	**7,77,000**

Disallowable expenses	**85,000**
Deduction received u/s 10AA (as calculated)	**78,00,000**
Long Term Capital Gains (on sale of land)	**3,00,000**
Deduction received under Chapter VI A(as calculated):	
80G	**55,000**
80IB	**80,000**

Calculate Tax Liability assuming that the Assessee is an LLP, Firm, Individual, HUF, AOP and BOI.

Solution (a):

Computation of Taxable Income for the Assessment Year 2014-15

Rule	**Nature of Business**	**Agl Inc.**	**Non-Agl. Inc.**
7A	Sale of centrifuged latex or cenex manufactured from rubber [65% is Agricultural Income]	4,55,000	2,45,000
7B	Sale of grown and cured coffee by seller in India [75% is Agricultural Income]	3,37,500	1,12,500
8	Growing and Manufacturing Tea [60% is Agricultural Income]	4,80,000	3,20,000
	Sale of plants from nursery	2,00,000	—
	Total	**14,72,500**	**6,77,500**

Computation of Tax Liability :

	₹
(a) Total Income (Agricultural Income + Non-agricultural Income)	21,50,000
(b) Tax on (a) above	4,75,000
(c) Total of (Agricultural Income + Basic Exemption Limit)	16,72,500
(d) Tax on (c) above	3,31,750
(e) Tax Payable (b) – (d)	1,43,250
Add: Education Cess @ 2%	2,865
Add: SHEC @ 1%	1,433
Total Tax Liability	1,47,548
Tax payable rounded off u/s 288B	1,47,550

Solution (b):

Statement showing computation of Total Income (applicable for all types of Assessee)

Particulars	₹	₹
Net Profit as per Profit & Loss A/c		90,97,000
Add: Depreciation	6,80,000	
Disallowable expenses	85,000	7,65,000
		98,62,000

Less: Depreciation allowable u/s 32 of Income Tax Act.		7,77,000 90,85,000
Less: Deduction received u/s 10AA		78,00,000
Business Proft		12,85,000
Add: Long Term Capital Gains		3,00,000
Gross Total Income		15,85000
Deduction received under Chapter VI A :		
80G	55,000	
80IB	80,000	1,35,000
Total Income		14,50,000

Computation of Adjusted Total Income (applicable for all types of Assessee)

Particulars	₹
Total Income (as computed above)	14,50,000
Add: Deduction claimed u/s 80IB	80,000
Add: Deduction claimed u/s 10AA	78,00,000
Adjusted Total Income	**93,30,000**

Minimum Alternate Tax (Mat) and Alternate Minimum Tax (AMT)

Statement showing computation of Tax Liability and Alternate Minimum Tax and Credit on Alternate Minimum Tax for the Assessment Year 2014-15

Particulars	**Firm/ LLP**	**Individual/ HUF/AOP/BOI**
Tax on Long Term Capital Gains (@ 20% of ₹ 3,00,000)	60,000	60,000
Tax on balance Total Income (@ 30% for Firm or LLP and at Slab Rate for Individual or HUF or AOP or BOI)	3,45,000	1,75,000
	4,05,000	2,35,000
Add: Education Cess @ 2%	8,100	4,700
Add: Secondary and Higher Secondary Education Cess @ 1%	4,050	2,350
Tax Liability (a)	4,17,150	2,42,050
Tax on Adjusted Total Income @ 18.5%	17,26,050	17,26,050
Add: Education Cess @ 2%	34,521	34,521
Add: Secondary and Higher Secondary Education Cess @ 1%	17,261	17,261
Alternate Minimum Tax (b)	**17,77,832**	**17,77,832**
Tax Payable [Higher than (a) and (b)]	17,77,830	17,77,830
Alternate Minimum Tax credit [(a) – (b)]	13,60,680	15,35,780

Question 46:

(a) Who can sign the return of HUF, if HUF does not have a major member?
(b) Is thumb impression valid for furnishing the Return of Income?
(c) Can assessee follow different method of accounting for different businesses?
(d) What can Assessing Officer do when the assessment is not set aside for fresh assessment but annulled?

Answer (a):

If the HUF has no major members as its Karta, a return may validly be signed by the eldest minor member of the family who manages the affairs of the family [Sridhar Udai Narayan vs.CIT(1962) 45 ITR 577 (All.)]

Answer (b):

The General Clauses Act accepts the thumb impression, as one of the modes of signing, valid and binding. [CIT vs. Kanhaiya Lal And Sons (2005) 273 ITR 425 (All.)]

Answer (c):

If an assessee is carrying on more than one business, he can follow cash system of accounting for one business and mercantile system (accrual system) of accounting for other business. Similarly, if he had more than one sources of income under the head Income from Other Sources, he can follow accrual system for one source of income under the head Income from Other Sources, and cash system for other sources of income.

Answer (d):

Where an assessment is not set aside for fresh assessment but annulled, no extended limitation is available. However, if the original time limit is available, the Assessing Offcer may proceed from the stage at which illegality which resulted into the annulment of the assessment supervened and make the assessment afresh. [CIT vs.Mrs.Ratanbai N.K. Dubhash (1998) 230 ITR 495(Bom.)]

Question 47:

(a) Swastik Charitable Trust furnishes the following particulars, for the year 2013-2014:

(₹)

Sale price of capital assets	**18,30,000**
Expenses incurred in connection with sale of the asset	**40,000**
Cost of the asset sold (purchased in 2012-2013)	**6,00,000**
Compute Capital Gain in the following cases:	
(a) Cost of the new asset to be acquired	**17,00,000**
(b) Cost of the new asset to be acquired	**10,00,000**
(c) Cost of the new asset to be acquired	**5,00,000**

(b) S, the Karta of a Hindu Undivided Family, was appointed as the treasurer of a private sector bank on his furnishing security of the family property valued at ₹ 3,00,000, as required by the service rules of the bank. S does not own any self-acquired property.

(i) Discuss how the remuneration of S as the treasurer should be assessed.

(ii) Will your answer be different if S had joined a partnership firm as a partner by contributing family funds of ₹ 50,000.

Solution (a):

Computation of Capital Gain: PY 2013-2014/AY 2014-2015

Particulars	Case-I	Case-II	Case-III
Sale price	18,30,000	18,30,000	18,30,000
Less: (i) Selling expenses	(-) 40,000	(-) 40,000	(-) 40,000
(ii) Cost of the asset Short-term Capital Gain	(-) 6,00,000 11,90,000	(-) 6,00,000 11,90,000	(-) 6,00,000 11,90,000
Less: Exemption in respect of Capital Gain	11,90,000	4,00,000	Nil
Taxable Capital Gain	Nil	7,90,000	11,90,000

Note : 1. Cost of new asset - cost of asset sold: 10,00,000 - 6,00,000 = 4,00,000

2. Cost of new asset - cost of asset sold: 5,00,000 - 6,00,000 = Nil

Solution (b):

(i) Remuneration from bank cannot be treated a return on the security of family property, pledged with the bank to secure the continuity of service. It cannot be treated as income of the HUF.

Remuneration is a compensation for services rendered by S, in his personal capacity on account of personal qualifications. S is assessable on remuneration as income from "salary". He can claim standard deduction under Sec. 16.

(ii) Membership of partnership has been obtained because of HUF funds and not because of personal skill or qualification of S. Therefore, any income from partnership frm will be treated as income of the HUF.

Question 48:

(a) In the case of Ms Shanti, you are required to compute the interest u/s 234A, 234B & 234C from the following details —

Tax on total income ₹ 3,00,000; Due date for filing the return 30.09.2014; Actual date of filing the return 1.10.2014 and tax paid on 30.09.2014 ₹ 3,00,000.

(b) Ms. Sonam, a resident Indian, furnishes the details for the Assessment Year 2014-2015 :

Particulars	Amount (₹)
(1) Income from profession	**2,54,000**
(2) Share of income from a partnership in country X (tax paid in Country X for this income in equivalent Indian Rupees 14,000)	**70,000**
(3) Commission income from a concern in country Y (tax paid in country Y @ 20%, converted in equivalent Indian Rupees	**40,000**
(4) Interest on scheduled banks [other than savings account]	**20,000**

Ms. Sonam wishes to know whether she is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

Solution (a):

Computation of interest u/s 234A

Particulars	**Asper assessed income**	
Tax Less : Advance tax paid TDS Amount on which interest is payable Period of default (October being part of a month shall be considered)	Nil Nil	₹ 3,00,000 Nil
		₹ 3,00,000 1 month
Interest u/s 234A (1% × ₹ 3,00,000 × 1 month)		**₹ 3,000**

Computation of interest u/s 234B

Since assessee did not pay any amount by way of advance tax, hence she is liable to pay interest u/s 234B.

Particulars	**Assessed income**
Shortfall	₹ 3,00,000
Period of default (From April to September)	6 months
Interest (1% × ₹ 3,00,000 × 6 months)	**₹ 18,000**

Computation of interest u/s 234C

Due date	**Advance Tax Payment ₹**	**Advance Tax paid ₹**	**Cumulative Advance Tax paid before due date ₹**	**Shortfall in Payment ₹**	**Surplus ₹**	**Months**	**Interest @ 1% p.m. ₹**
15.9.2013	30% of ₹ 3,00,000 = 90,000	Nil	Nil	90,000	—	3	2,700
15.12.2013	60% of ₹ 3,00,000 = 1,80,000	Nil	Nil	1,80,000	—	3	5,400
15.3.2014	100% of ₹ 3,00,000 = 3,00,000	Nil	Nil	3,00,000	—	1	3,000
							11,100

Total interest payable	Particulars	Amount
U/s 234A		3,000
U/s 234B		18,000
U/s 234C		11,100
	Total	**32,100**

Solution (b):

(1) Computation of Total Income for the Assessment Year 2014-15

Particulars	Amount (₹)	Amount (₹)
(a) Income from Business or Profession:		
(i) Income from Profession	2,54,000	
(ii) Share of income in partnership frm in country X	70,000	3,24,000
(b) Income from other sources:		
(i) Interest from scheduled bank	20,000	
(ii) Commission earned in Country Y, assumed from other sources	40,000	60,000
Total Income		**3,84,000**

(2) Computation of Tax Liability on Total Income for the Assessment Year 2014-15

Particulars	Amount (₹)
Tax on Total Income of ₹ 3,84,000	18,400
Add: Surcharge on Income Tax	Nil
Add: Education Cess @ 2%	368
Add: Secondary and Higher Education Cess @ 1%	184
	18,952
Less: Double taxation relief : 1,10,000 x 4.94%	5,434
Tax Payable	**13,518**
Rounded off u/s 288B	**13,520**

Note : (i) Average rate of tax in the foreign country = 20% i.e. [(₹ 14,000 + 20% of ₹40,000)/(70,000+40,000)] ×100 (ii) Average rate of tax in India = (18,952/3,84,000) × 100 = 4.94%

Question 49:

(a) Mr. M is a musician deriving income from foreign concerts performed outside India, ₹70,000. Tax of ₹ 14,000 was deducted at source in the country where the concerts were given. India does not have any agreement with that country for avoidance of double taxation. Assuming that Indian income of M is ₹ 3,00,000, what is the relief due to him under Sec. 91 for the Assesement Year 2014-2015.

(b) Deepak, a person of Indian origin was working in Austria since 1991. He returned to India for permanent settlement in May 2013 when he remitted money into India. For the valuation date 31.3.2014, the following particulars were furnished. You are required to compute the taxable wealth. The reason for inclusion or exclusion should be stated -

- **Building owned and let-out for 290 days for residence. Net maintainable rent ₹2,00,000 and the Market Value (Excess of Unbuilt Area over Specified Area is 20% of the Aggregate Area) ₹ 60 lakhs.**
- **Jewellery : (a) Purchased in April 2013 out of money remitted to India from Austria ₹24,00,000**

  (b) Purchased in May 2013 out of sale proceeds of motor-car brought from abroad and sold for ₹80 lakhs.
- **Value of interest in urban land held by a firm in which he is a partner ₹20 lakhs.**
- **Bonds held in companies ₹20 lakhs.**
- **Motor car used for own business ₹ 50 lakhs.**
- **Vacant house plot of 480 sq. mts. (purchased in December 2004) market value of ₹40,00,000.**
- **Cash in hand ₹ 90,000.**
- **Urban land purchased in the year 2013 out of withdrawals of NRE Account ₹ 30,00,000.**

Solution (a):

(1) Computation of Total Income for the Assessment Year 2014-15

Particulars	**Amount (₹)**
Indian Income	3,00,000
Foreign Income	70,000
Gross Total Income or Total Income	3,70,000

(2) Computation of Tax Liability on Total Income for the Assessment Year 2014-15

Particulars	**Amount (₹)**
Tax on Total Income	17,000
Add: Education Cess @ 2%	340
Add: Secondary and Higher Education Cess @ 1%	170
Less: Double taxation relief u/s 91 = ₹ 70,000 × 4.73%	3,311
Tax Payable	**14,199**

Note: 1. Average rate of Indian income tax: (17,510 ÷ 3,70,000) × 100 = 4.73%

2. Average rate of foreign income tax:

Relief is allowed either at the average rate of Indian Income Tax or the average rate of Foreign Income Tax = (14,000/70,000) × 100 = 20% whichever is lower. Accordingly, the relief has been allowed at the average rate of Indian Income tax.

Solution (b):

Assessee : Abhishek **Valuation Date : 31.3.2014** **Assessment Year : 2014-15**

Computation of Net Wealth

Nature of the Asset	**₹**	**₹**	**Reasons**
Value of the House		35,00,000	Asset u/s 2(ea). Working Note 1
Jewellery: Purchased in April 2013	24,00,000		
Less: Exempt u/s 5(v)	(24,00,000)	Nil	Asset u/s 2(ea). Purchased out of money brought into India
Jewellery: Purchased in May	80,00,000		

2013 Less: Exempt u/s 5(v) Interest in Urban Land held by firm	(80,00,000)	Nil 20,00,000	Asset u/s 2(ea).Purchased out of sale proceeds of assets brought into India Deemed Asset u/s 4(1)(b)
Bonds held in companies		Nil	Not an asset u/s 2(ea)
Motor car		50,00,000	Asset u/s 2(ea). Not held as stock-in-trade
Vacant House Plot (480 sq. mts.) Less: Exempt u/s 5(vi)	40,00,000 (40,00,000)	Nil	Asset u/s 2 (ea).House/part of house/ plot less than 500 sq.mts.
Cash in hand		Nil	Since not exceeding ₹ 50,000
Urban Land Purchased Less: Exempt u/s 5(v)	30,00,000 (30,00,000)	Nil	Purchased out of money brought into India
NET WEALTH		1,05,00,000	
Less : Basic Exemption		30,00,000	
Net Taxable Wealth		75,00,000	
Tax Payable @ 1%		75,000	

(1) Working Notes: Valuation of Building :

Net Maintainable Rent(NMR) = ₹2,00,000

Capitalized Value of NMR = NMR×12.5 (Owner of the land) = ₹ 2,00,000 × 12.5 = ₹25,00,000 *Add* : Premium for excess of unbuilt area (20%) over specifed area = 40% of CNMR = ₹10,00,000

VALUE OF THE HOUSE ₹ 35,00,000.

Question 50:

(a) Compute the taxable income of a Chamber of Commerce from the following data.

	1 ₹	2 ₹	3 ₹
Gross receipts for specific services rendered to members	**2,60,000**	**2,60,000**	**2,60,000**
Expenses incurred in connection with the above	**60,000**	**1,10,000**	**2,00,000**
Interest on bank deposits	**40,000**	**' 40,000**	**80,000**
Receipt from members	**2,00,000**	**3,00,000**	**2,60,000**
Expenditure incurred on members	**1,50,000**	**4,10,000**	**3,50,000**

(b) X Airlines incorporated as a company in USA operates its flights to India and vice versa during the previous year 2013-14 and collects charges of ₹1,25,00,000 for carriage of passengers and cargo out of which ₹65,00,000 were received in US dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹1, 95,00,000. Compute the income chargeable to tax of the foreign airlines.

Solution (a):

Profit and gains of business and profession			
Net income from rendering specific services (Gross receipts-Expenses)	2,00,000	1,50,000	60,000

Less: Deficiency set off (maximum to the extent of 50% of total assessable income before set off of deficiency i.e. ₹1,90,000 and ₹1,40,000 in case of 2 and 3 respectively)	---	95,000	60,000
(A)	2,00,000	55,000	Nil
Interest on bank deposit under other heads	40,000	40,000	80,000
Less: Deficiency although allowable upto 50% of total assessable income which could not be set off against business income			10,000
Income (B)	40,000	40,000	70,000
Gross Total Income (A + B)	2,40,000	95,000	70,000
Less: Deduction under sections 80C to 80U	Nil	Nil	Nil
	2,40,000	95,000	70,000

1. Surplus of ₹ 50,000 under case 1 is not taxable as it is from mutual activity.
2. Deficiency under case 2 and 3 would not have been allowed but for the benefit given under section 44A.
3. Assessable income in case of 2 and 3 is as under:

	Case I ₹	Case II ₹
Surplus from specific services	1,50,000	60,000
Interest income	40,000	80,000
	1,90,000	1,40,000
Less: Under section 80C to 80U	Nil	Nil
	1,90,000	1,40,000

4. In case 3, 50% of the assessable income is ₹70,000 (i.e. 50% of ₹1,40,000) but first it will be set off from business income which in this case is ?60,000 and the balance shall be set off from other income.

Solution (b):

As per section 44BBA, in case of an Airlines the income is presumed to be 5% of the following:

(i) the amount paid or payable (whether' in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India, and

(ii) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India. Hence, the taxable income will be determined as under:

	Passenger fare booked from Mumbai to New York whether paid in India or not ₹	Passenger fare booked from New York to Mumbai if received in India ₹
Fare	60,00,000	65,00,000
Taxable income	3,00,000	3,25,000

Note—If the passenger fare booked from New York to Mumbai in not received in India, then such fare shall not be included for calculating presumptive income.

Question 51:

(a) Construction Company Ltd. has let-out a premise with effect from 1.10.2013 for monthly rent of ₹2.5 lakh. The lease is valid for 10 years and the tenant has made a deposit equivalent to 3 months rent. The tenant has undertaken to pay the municipal taxes of the premises amounting to ₹ 3 lakh. What will be the value of the property under Schedule III of the Wealth Tax Act for assessment to wealth tax?

(b) Explain the role of market forces in determination of Arm's Length Price?

(c) What are the difficulties arises in applying the Arm's Length Principle?

Solution (a):

Assessee: Property Company Ltd. Valuation Date: 31.3.2014 Assessment Year: 2014-15

Computation of Value of Let-out Property

Actual Annual Rent Receivable - ₹ 2,50,000 × 12 Months	30,00,000
Add: Municipal Taxes borne by the Tenant	3,00,000
GROSS MAINTAINABLE RENT	33,00,000
Less: Municipal Taxes levied by the Municipal Authority	3,00,000
Less: 15% of Gross Maintainable Rent ₹ 30,00,000 × 15%)	4,50,000
NET MAINTAINABLE RENT	25,50,000

Value of the Property = Capitalized Value of NMR

NMR × 8 (unexpired period of lease is less than 50 years) = ₹ 25,50,000×8 = ₹ **2,04,00,000**

Answer (b):

Role of market forces in determining the "Arm's Length Price"

In case of transactions between Independent enterprises, the conditions of their commercial and fnancial relations (eg. The price of goods transferred or services provided and the conditions of the transfer or provision) are, ordinarily, determined by the market force.
Whereas,
In case of transactions between MNEs (Multinational Enterprises), their commercial and fnancial relations may not be affected by the external forces in the same way, although associated enterprises often seek to replicate the dynamics of the market forces in their dealings with each other.

Answer (c):

Diffculties in applying the arm's length principle

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are diffculties in applying this principle in a number of situations.

The most serious problem is the need to fnd transactions between independent parties which can be said to be exact compared to the controlled transaction.

It is important to appreciate that in an MNE system, a group frst identifes the goal and then goes on to create the associated enterprise and fnally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.

Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefts of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.

The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).

Arm's length principle involves a lot of cost to the group.

Question 52:

(a) Kango Inc. a US Company, sells Laser Printer Cartridge Drums to its Indian Subsidiary Quality Printing Ltd at $ 30 per drum. Basin Solutions Inc. has other takers in India for its Cartridge Drums, for whom the price is $ 40 per drum. During the year, Kango had supplied 12,000 Cartridge Drums to Quality Printing Ltd.

Determine the Arm's Length Price and taxable income of Quality Printing Ltd if its income after considering the above is ₹ 75,00,000. Compliance with TDS provisions may be assumed and Rate per USD is ₹ 60. Also determine income of Basin Inc.

(b) R Ltd. has two units. One of these units is situated in Uttrakhand for which A Ltd. is claiming 100% deduction of profits under section 80-IC. A Ltd. filed the return of income as under:

	₹
Business income	
Profit from non-eligible business	**54,00,000**
Profit for business eligible for deduction u/s 80-IC	**32,00,000**
Gross total income	**86,00,000**
Less: Deduction u/s 80-IC	**32,00,000**
	54,00,000

Eligible unit has purchased goods worth ₹6 crores from non-eligible unit whose fair market value as determined by A.O. is ₹6.30 crore. Compute the total income of R Ltd.

(c) R Ltd. furnishes the following return of income for the previous year 2013-14.

	₹
Business income of a unit eligible for deduction u/s 80-IE	**49,00,000**
Profit from other unit B	**81,00,000**
	1,30,00,000
Less: Deduction u/s 80-IE	**49,00,000**
Total income	**81,00,000**

Unit A made a sale of ₹8.4 crores to unit B. Assessing Officer referred the determination of FMV to TPO. TPO determines the arm's length price to be 8.1 crore.

Determine the total income of the assessee.

Solution (a):

A. Computation of Total Income of Quality Printing Ltd.

Particulars	₹	₹
Total Income before adjusting for differences due to Arm's Length Price		75,00,000
Add: Difference on account of adopting Arm's Length price [12,000 x $ 30 × ₹60]	2,16,00,000	
Amount actually paid to Doc Solutions [12,000 × $ 40 × ₹60]	(2,88,00,000)	
Incremental Cost on adopting ALP U/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore,	72,00,000	
Total Income of Quality Printing Ltd		75,00,000

B. Computation of Total Income of Kango Inc.

The provisions relating to taxing income of Kango Inc., on applying Arm's Length Price for transactions entered into by a Foreign Company is given in Circular 23 dated 23.7.1969, which is as follows:

(i) **Transactions Not Taxable in India :** Transactions will not be subject to tax in India if transactions are on principal-to-principal basis and are entered into at ALP, and the subsidiary also carries on business on its own.

(ii) **Transactions Taxable in India** if the Indian Subsidiary does not carry on any business on its own. The following are the other considerations in this regard -

  (i) Adopting ALP does not affect the computation of taxable income of Kango Inc. if tax has been deducted at source or if tax is deductible.

  (ii) Where ALP is adopted for taxing income of the Parent Company, income of the recipient Company (i.e. Quality Printing Ltd) will not be recomputed.

Solution (b):

	₹
Gross total income as computed above	86,00,000
Less: Deduction u/s 80-IC (32,00,000-30,00,000) (Lower value of purchase price due to which excess profit has been computed)	2,00,000
Total income	84,00,000

Solution (c):

	₹
Gross total income as computed	1,30,00,000
Less: Deduction u/s 80-IE (49,00,000 - 30,00,000) (Overstated sale price 8.4 - 8.1 crores = 30,00,000)	19,00,000
Total income	1,11,00,000