DISCLAIMER

The Suggested Answers hosted in the website do not constitute the basis for evaluation of the students' answers in the examination. The answers are prepared by the Faculty of the Board of Studies with a view to assist the students in their education. While due care is taken in preparation of the answers, if any errors or omissions are noticed, the same may be brought to the attention of the Director of Studies. The Council of the Institute is not in anyway responsible for the correctness or otherwise of the answers published herein.

© The Institute of Chartered Accountants of India

PAPER – 4 : TAXATION

Question No.1 is compulsory.

Attempt any five questions from the remaining six questions.

Working notes should form part of the answer.

Wherever necessary, suitable assumptions may be made and stated clearly by way of note.

All questions pertaining to the Income-tax relate to Assessment Year 2014-15, unless stated otherwise in the question.

Question 1

(a) Mr. Devansh, an Indian Resident aged 38 years, carries on his own business. He has prepared the following Profit & Loss A/c for the year ending 31-03-2014:

Particulars	₹	Particulars	₹
Salary	48,000	Gross Profit	4,30,400
Advertisement	24,000	Cash Gift (on the occasion of marriage)	1,20,000
Sundry Expenses	54,500	Interest on Debentures (Listed in recognized stock exchange) Net of Taxes	3,600
Fire Insurance (₹ 10,000 relates to House Property)	30,000		
Income-tax and Wealth-tax	27,000		
Household expenses	42,500		
Depreciation (allowable)	23,800		
Contribution to an University approved and notified U/s. 35(1)(ii)	1,00,000		
Municipal Taxes paid for house property	36,000		
Printing & Stationery	12,000		
Repairs & Maintenance	24,000		
Net Profit	1,32,200		
	5,54,000		5,54,000

The Suggested Answers for Paper 4: Taxation are based on the provisions of law as amended by the Finance Act, 2013 and applicable for A.Y. 2014-15 (in the case of Income-tax), which is the assessment year relevant for November, 2014 examination.

© The Institute of Chartered Accountants of India

Other information:

(i) Mr. Devansh owns a House Property which is being used by him for the following purposes:

- *25% of the property for own business*
- *25% of the property for self-residence*
- *50% let out for Residential purpose*

(ii) Rent received from 50% let out portion during the year was ₹ 1,65,000.

(iii) On 1-12-2013 he acquired a vacant site from his friend for ₹ 1,05,000. The State Stamp Valuation Authority fixed the value of the site at ₹ 2,80,000 for stamp duty purpose.

(iv) He received interest on Post Office Savings Bank Account amounting to ₹ 500

(v) Cash gift on the occasion of marriage includes gift of ₹ 20,000 from non-relatives.

(vi) LIC premium paid (Policy value ₹ 3,00,000 taken on 01-06-2013) ₹ 60,000 for his handicapped son. (Section 80U disability)

(vii) He purchased 10,000 shares of X Company Ltd on 01-01-2010 for ₹ 1,00,000 and received a 1:1 bonus on 01-01-2011. He sold 5000 bonus shares in September 2013 for ₹ 2,20,000. (Shares are not listed and STT not paid).

Compute Total Income and Net Tax payable by Mr. Devansh for the Assessment Year 2014-15. (10 Marks)

(b) Compute the service tax liability of Mr. Saksham, an Air Travel Agent for the quarter ended 30-09-2013 using the following details:

	Particulars	*₹*
(i)	*Basic air fare collected for domestic booking of tickets*	*45,00,000*
(ii)	*Basic air fare collected for international booking of tickets*	*90,00,000*
(iii)	*Commission received from the airlines towards the sale of above tickets*	*12,00,000*

In the above case, would the service tax liability of Mr. Saksham be reduced if he opts for special provision for payment of service tax as provided under rule 6 of the Service Tax Rules, 1994 instead of paying service tax @12%.

Mr. Saksham is not eligible for small service providers exemption. Also service tax has been charged separately. (6 Marks)

(c) The following data relating to an importer for the previous year 2013-14 is available:

(i) Customs value (Assessable value of imported goods) is ₹ 4,00,000

(ii) Basic customs duty payable 10%

© The Institute of Chartered Accountants of India

(iii) If the goods were produced in India, central excise duty would have been 16%

Education cess and Secondary higher education cess are as applicable.

Special CVD at appropriate rate is applicable

Find the customs duty payable.

How much CENVAT credit can be availed by importer if the importer is a manufacturer?

(4 Marks)

Answer

(a) Computation of total income and net tax liability of Mr. Devansh for A.Y.2014-15

Particulars	Working Note Nos.	₹
Income from house property	1	1,02,900
Profit and gains of business or profession	2	37,600
Long-term capital gains	3	2,20,000
Income from other sources	4	1,79,000
Gross Total Income		5,39,500
Less: Deduction under Chapter VI-A	5	45,000
Total Income		4,94,500
Tax on total income		
Tax on total income other than long-term capital gains [(₹ 2,74,500 - ₹ 2,00,000) × 10%]		7,450
Tax on long-term capital gains under section 112 @20% [₹ 2,20,000 × 20%]		44,000
		51,450
Less: Rebate under section 87A		2,000
		49,450
Add: Education cess @ 2% and SHEC @ 1%		1,484
Total tax liability		50,934
Less: Tax deducted at source on interest on debentures [₹ 3,600 × 10/90]		400
Net Tax liability		50,534
Net tax liability (rounded off)		50,530

© The Institute of Chartered Accountants of India

Working Notes:

	Particulars	₹	₹
(1)	Income from House Property		
(i)	Self-occupied portion (50%)		Nil
	As per section 23(2), income from self-occupied portion is Nil.		
(ii)	Let-out portion – 50%		
	Gross Annual Value		1,65,000
	(Rent received has been taken as the Gross Annual Value in the absence of other information relating to Municipal Value, Fair Rent and Standard Rent)		
	Less: Municipal taxes paid in respect of let out portion (50% of ₹ 36,000)		18,000
	Net Annual Value (NAV)		1,47,000
	Less: Deduction under section 24@30% of NAV		44,100
			1,02,900
(2)	Profits & Gains of Business or Profession		
	Net profit as per profit and loss account		1,32,200
	Add: Expenses debited to profit and loss account but not allowable		
	(i) Fire Insurance [relating to let-out and self-occupied house property] (75% of ₹10,000)	7,500	
	(ii) Income-tax and wealth-tax [disallowed as per section 40(a)(ii)/(iia)]	27,000	
	(iii) Household expenses (Under section 37, personal expenses are disallowed)	42,500	
	(iv) Contribution to university approved under section 35(1)(ii), considered separately	1,00,000	
	(v) Municipal Taxes paid in respect of let-out and self-occupied portions [75% of ₹ 36,000]	27,000	2,04,000
			3,36,200
	Less: Weighted deduction@175% for contribution to university approved and notified under section 35(1)(ii) [1,00,000 × 175%]		1,75,000
			1,61,200

© The Institute of Chartered Accountants of India

	Less: Income credited to Profit & Loss Account but not taxable under this head:		
	(i) Cash gift	1,20,000	
	(ii) Interest on debentures (See Note below)	3,600	1,23,600
			37,600
(3)	Capital gains		
	Sale consideration of bonus shares		2,20,000
	Less: Cost of acquisition [Nil, for bonus shares]		Nil
	Long-term capital gain		2,20,000
(4)	Income from Other Sources		
	Cash gift on the occasion of marriage is exempt, even if the same is received from a non-relative		Nil
	In case of vacant site received for inadequate consideration, difference between stamp duty value (₹ 2,80,000) and actual consideration (₹ 1,05,000) is taxable under section 56(2)(vii), since such difference exceeds ₹ 50,000.		1,75,000
	Interest of ₹ 500 on post-office savings bank account [In case of individual account, a sum upto ₹ 3,500 is exempt under section 10(15)]		Nil
	Interest on debentures (gross) [₹ 3,600 × 100/90] (The rate of TDS under section 194A is 10%) (See Note below)		4,000
	Income chargeable under this head		1,79,000
(5)	Deduction under Chapter VI-A :		
	Deduction under section 80C		
	LIC Premium paid ₹ 60,000 [Since the policy was taken after 31.3.2013 to insure the life of disabled son, the premium is restricted to 15% of sum assured] [15% of ₹ 3,00,000]		45,000

Note: TDS provisions under section 194A would be attracted only if the amount of interest on debentures exceeds ₹ 5,000. In this case, interest is only ₹ 4,000. Hence, TDS provisions under section 194A would not be attracted. However, since the question specifically mentions that interest of ₹ 3,600 on debentures has been credited to the profit and loss account "net of taxes", the interest has been grossed up for inclusion under the head "Income from other sources".

© The Institute of Chartered Accountants of India

(b) Computation of service tax liability

Particulars	₹
Commission received from the airlines on the sale of domestic and international tickets [Refer Note below]	12,00,000
Value of taxable service	12,00,000
Service tax @ 12% [₹12,00,000×12%]	1,44,000
Education cess @ 2% [₹1,44,000×2%]	2,880
Secondary and higher education cess @ 1% [₹1,44,000×1%]	1,440
Service tax liability	1,48,320

Note: As per rule 6 of the Service Tax (Determination of Value) Rules, 2006, commission received by the air travel agent from the airlines is only included in the value of taxable service and not the air fare collected by him in respect of the service provided by him.

However, if Mr. Saksham opts for the special provision for payment of service tax as provided under rule 6(7) of the Service Tax Rules, 1994 instead of paying service tax @12%, his service tax liability would be computed as under:

Particulars	₹
0.6% of the basic air fare collected for domestic booking of tickets [₹45,00,000 × 0.6%]	27,000
1.2% of the basic air fare collected for international booking of tickets [₹90,00,000× 1.2%]	1,08,000
Service tax	1,35,000
Education cess @ 2% [₹ 1,35,000×2%]	2,700
Secondary and Higher Education cess @ 1% [₹ 1,35,000×1%]	1,350
Service tax liability	1,39,050

Yes, the service tax liability of Mr. Saksham would be reduced in the aforesaid option.

(c) Computation of customs duty payable

Particulars	Duty %	₹
Assessable value		4,00,000.00
Basic customs duty	10	40,000.00
Sub-total for calculating CVD		4,40,000.00
CVD × excise duty rate (Education cess and Secondary and higher education cess on CVD are exempt.)	16	70,400.00
Education cess of customs	2	

© The Institute of Chartered Accountants of India

on ₹ 1,10,400 (₹ 40,000 + ₹ 70,400)		2,208.00
Secondary and higher education cess of customs on ₹ 1,10,400 (₹ 40,000 + ₹ 70,400)	1	1,104.00
Special CVD u/s 3(5) on ₹ 5,13,712 (₹ 4,00,000 + ₹ 40,000 + ₹ 70,400+ ₹ 2,208 + ₹ 1,104) [rounded off]	4	20,548
Customs duty payable (₹ 40,000 + ₹ 70,400+ ₹ 2,208 + ₹ 1,104 + ₹ 20,548)		1,34,260

Since importer is a manufacturer, he can avail CENVAT credit of CVD and special CVD as per rule 3(1)of the CENVAT Credit Rules, 2004 i.e. ₹ 90,948 (₹ 70,400 + ₹ 20,548).

Question 2

(a) *Mrs. Geetha and Mrs. Leena are sisters and they earned the following income during the Financial Year 2013-14. Mrs. Geetha is settled in Malaysia since 1984 and visits India for a month every year. Mrs. Leena is settled in Indore since her marriage in 1992. Compute the total income of Mrs. Geetha and Mrs. Leena for the assessment year 2014-15:*

Sl. No.	*Particulars*	*Mrs. Geetha ₹*	*Mrs. Leena ₹*
(i)	*Income from Profession in Malaysia, (set up in India) received there*	*15,000*	*-*
(ii)	*Profit from business in Delhi, but managed directly from Malaysia*	*40,000*	*-*
(iii)	*Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels.*	*1,20,000*	*-*
(iv)	*Divided from PQR Ltd., an Indian Company*	*5,000*	*9,000*
(v)	*Divided from a Malaysian company received in Malaysia*	*15,000*	*8,000*
(vi)	*Cash gift received form a friend on Mrs. Leena's 50th birthday*	*-*	*51,000*
(vii)	*Agricultural income from land in Maharashtra*	*7,500*	*4,000*
(viii)	*Past foreign untaxed income brought to India*	*5,000*	*-*
(ix)	*Fees for technical services rendered in India received in Malaysia*	*25,000*	*-*
(x)	*Income from a business in Pune (Mrs. Geetha receives 50% of the income in India)*	*12,000*	*15,000*

© The Institute of Chartered Accountants of India

(xi)	*Interest on debentures in an India company (Mrs. Geetha received the same in Malaysia)*	*18,500*	*14,000*
(xii)	*Short-term capital gain on sale of shares of an Indian company*	*15,000*	*25,500*
(xiii)	*Interest on savings account with SBI*	*12,000*	*8,000*
(xiv)	*Life insurance premium paid to LIC*	*-*	*30,000*

(8 Marks)

(b) ABC private Ltd. is engaged in providing taxable services. The aggregate value of taxable services provided and invoiced during January, 2014 are ₹ 18,00,000. The invoices of ₹ 18,00,000 include the following:

₹ 1,00,000 relating to betting

₹ 1,25,000 for services rendered within the Indian territorial waters.

₹ 1,75,000 for services rendered to its associated enterprise.

₹ 1,50,000 for services rendered in state of Jammu & Kashmir.

Note: All the invoices are inclusive of service tax.

In the Financial year 2012-13 ABC Private Ltd. had paid ₹ 2,06,000 as service tax @12.36%. Compute the service tax payable for the month of January, 2014. (5 Marks)

(c) Mr. Mani reported Interstate sales of ₹ 45,00,000 for the Financial Year 2013-14. In this regard following additional information is available:

(i) Freight ₹ 2,30,000

(₹ 80,000 is not shown separately on invoices)

(ii) Goods sold to Mr. X for ₹ 45,000 on 15-05-2013 were returned on 18-10-2013

(iii) Mr. Z, a buyer to whom goods worth ₹ 30,000 were dispatched on 17-04-2013 rejected such goods. The said goods were received back on 18-11-2013.

Determine the taxable turnover and CST payable, assuming that all the transactions were covered by valid "C" forms and sales tax rate within the state is 5%. (3 Marks)

Answer

(a) The residential status of Mrs. Geetha and Mrs. Leena has to be determined on the basis of the number of days of their stay in India. Since Mrs. Geetha is settled in Malaysia since 1984, she would be a non-resident for A.Y.2014-15. Her visit to India for a month every year would not change her residential status. However, Mrs. Leena would be resident and ordinarily resident for A.Y.2014-15, since she is settled in India permanently since 1992.

© The Institute of Chartered Accountants of India

Based on their residential status, the total income of Mrs. Geetha and Mrs. Leena would be determined as follows:

Computation of total income of Mrs. Geetha & Mrs. Leena for the A.Y. 2014-15

S. No.	Particulars	Mrs. Geetha (Non-Resident) (₹)	Mrs. Leena (Resident) (₹)
1.	Income from profession in Malaysia (set up in India) received there (*Note 1)*	-	-
2.	Profit from business in Delhi, but managed directly from Malaysia (*Note 1)*	40,000	-
3.	Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels (*Note 1)*	-	-
4.	Dividend from PQR Ltd. an Indian Company *[Exempt under section 10(34)]*	-	-
5.	Dividend from Malaysian Company received in Malaysia (*Note 1)*	-	8,000
6.	Cash gift received from a friend on Mrs. Leena's 50th birthday *Note: As per section 56(2)(vii), cash gifts received from a non-relative would be taxable, if the amount exceeds ₹ 50,000 in aggregate during the previous year.*	-	51,000
7.	Agricultural income from land in Maharashtra *[Exempt under section 10(1), both in the hands of non-resident and resident].*	-	-
8.	Past foreign untaxed income brought to India *[Not taxable, since it does not represent income of the P.Y.2013-14].*	-	-
9.	Fees for technical services rendered in India, but received in Malaysia *(Note 1)*	25,000	-
10.	Income from a business in Pune (Mrs. Geetha receives 50% of the income in India) *(Note 2)*	12,000	15,000
11.	Interest on debentures in an Indian company (Mrs. Geetha received the same in Malaysia) *(Note 2)*	18,500	14,000

© The Institute of Chartered Accountants of India

12.	Short-term capital gain on sale of shares of an Indian company *(Note 2)*	15,000	25,500
13.	Interest on savings account with SBI *(Note 2)*	12,000	8,000
Gross Total income		1,22,500	1,21,500
Less: Deductions under Chapter VIA			
	- Section 80C [Life insurance premium paid] [Assuming that premium paid is within the specified percentage (10% /20%, as the case may be) of capital sum assured]	-	30,000
	- Section 80TTA (In case of an individual, interest upto ₹ 10,000 from savings account with, inter alia, a bank is allowable as deduction under section 80TTA)	10,000	8,000
	Total Income	1,12,500	83,500

Notes:

(1) As per section 5(1), global income is taxable, in case of a resident. However, as per section 5(2), only the following incomes are chargeable to tax, in case of a non-resident:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

Therefore, income from profession in Malaysia, rent from property in Malaysia and dividend from Malaysian company received in Malaysia by Mrs. Geetha, a non-resident, would not be taxable in India, since both the accrual and receipt are outside India.

However, profit from business in Delhi would be taxable in India in the hands of Mrs. Geetha, even though it is managed directly from Malaysia.

Further, by virtue of section 9(1)(vii), fees for technical services rendered in India would also be taxable in the hands of Mrs. Geetha, since it is deemed to accrue or arise in India.

(2) The income referred to in S. No. 10, 11, 12 and 13 are taxable in the hands of both Mrs. Geetha and Mrs.Leena due to their accrual/deemed accrual in India, even though a part of income from business in Pune and the entire interest on debentures in Indian company is received by Mrs. Geetha outside India.

© The Institute of Chartered Accountants of India

(b) Computation of service tax payable by ABC Private Ltd. for the month of January, 2014

Particulars	₹
Total invoiced amount	18,00,000
Less: Invoices relating to betting,	(1,00,000)
Less: Services rendered in State of Jammu & Kashmir (Note-2)	(1,50,000)
Value of taxable services including service tax	15,50,000
Service tax (₹ 15,50,000 × 12.36/112.36)	1,70,505.52
Service tax payable (rounded off)	1,70,506

Notes:

1. Since betting is included in the negative list of services under section 66D(i) of the Finance Act, 1994, it is not liable to service tax.
2. As per section 66B of the Finance Act, 1994 service tax is leviable on the services (other than services included in negative list) provided in the taxable territory. Taxable territory is defined under section 65B(52) of the Finance Act, 1994 to mean whole of India (including territorial waters of India) except the State of Jammu and Kashmir. Hence, services rendered within the Indian territorial waters are liable to service tax. However, services rendered in the State of Jammu and Kashmir are not liable to service tax by virtue of section 64(1) of Finance Act, 1994.
3. Services rendered to associated enterprise ₹ 1,75,000 is taxable. Since the same is already included in the total invoiced amount, no separate treatment is required.
4. The aggregate value of taxable services of ABC Private Ltd. in the preceding financial year 2012-13 is more than ₹ 10 lakh as it had paid the service tax of ₹ 2,06,000 in said year. Hence, it is not eligible for small service provider's exemption in the current financial year 2013-14 under *Notification No. 33/2012 ST dated 20.06.2012*.

(c) Computation of Mr. Mani's taxable turnover and CST payable for financial year 2013-14

Particulars	₹	₹
Total inter-State sales		45,00,000
Less: Freight shown separately in the invoices[Freight not shown separately in invoices is not deductible]	1,50,000	
Less: Goods returned by Mr. X [deductible as returned within 6 months]	45,000	
Less: Goods rejected by Mr. Z after 6 months[deductible although returned after 6 months, as it is a case of an un-fructified sale]	30,000	2,25,000
Turnover (including CST)		42,75,000

© The Institute of Chartered Accountants of India

Taxable turnover (rounded off)		
[₹ 42,75,000 × 100/102]		41,91,176
CST @ 2% [₹ 42,75,000 × 2/102]		
Since transactions are covered by valid 'C' Form, CST is 2% or sales tax rate within the State (5%),		
whichever is lower, i.e., 2%		
CST payable (rounded off)		83,824

Note: Sales figures have been assumed to be inclusive of central sales tax.

Question 3

(a) (i) The following are the particulars in respect of a scheduled bank incorporated in India:

	Particulars	*₹ in lakhs*
(A)	*Provision for bad and doubtful debts under section 36(1)(viia) up to Assessment Year 2013-14*	*100*
(B)	*Gross Total Income of Assessment Year 2014-15 [before deduction under section 36(1)(viia)]*	*800*
(C)	*Aggregate average advances made by rural branches of the bank*	*300*
(D)	*Bad debts written off (for the first time) in the books of account (in respect of urban advances only) during the previous year 2013-14.*	*210*

Compute the deduction allowable under section 36(1)(vii) for the Assessment Year 2014-15. *(4 Marks)*

(ii) During the previous year 2013-14 a Charitable Trust has the following income:

	₹
Voluntary contribution with specific direction that they shall form part of corpus of the Trust	*13,00,000*
Voluntary contribution without any specific direction	*19,20,000*
Income from Property held in Trust	*8,16,000*

During the Previous Year 2013-14, the Trust spends ₹ 8,50,000 for charitable purposes in India. Besides it gives donation of ₹ 84,560 to Public Charitable Trusts. It sets apart ₹ 14,00,000 for the purpose of construction of Charitable Hospital to be completed by 31st March, 2019.

Determine the Taxable Income of the Trust for the Assessment Year 2014-15.

(4 Marks)

© The Institute of Chartered Accountants of India

(b) Mr. Shiven is providing service of construction of buildings. He purchased the following items in May, 2013:

Items	*Excise Duty paid in ₹ (including education cesses)*
Dumpers	*1,06,000*
Electric transformer falling under Chapter 85 of Excise Tariff	*40,000*
Refrigerator fitted in office	*15,000*
Diesel for use in dumpers	*25,000*
Car for use of employees for coming to site and going back	*1,50,000*
Trucks falling under tariff sub-heading 8704, used for the transport of construction material.	*15,000*

You are required to determine the amount of CENVAT credit available with Mr. Shiven.

(4 Marks)

(c) Calculate the assessable value and the excise duty payable from the following particulars:

	₹
Total invoice price (inclusive of taxes)	*55,000*
State VAT	*5,500*
Insurance charges for dispatch of final product	*275*
Packing charges	*1,200*
Outward freight beyond the place of removal	*2,100*
Excise duty rate is 12% and education cesses as applicable	

An exemption notification grants exemption of 50% of the duty payable on this product.

(4 Marks)

Answer

(a) (i) Computation of deduction allowable under section 36(1)(vii) for the A.Y.2014-15

Particulars	₹ in lakh	
Bad debts written off (for the first time) in the books of account (in respect of urban advances)		210
Less: Credit balance in the "Provision for bad and doubtful debts" under section 36(1)(viia) as on 31.3.2014		
(i) Provision for bad and doubtful debts under section	100	

© The Institute of Chartered Accountants of India

	36(1)(viia) upto A.Y.2013-14		
(ii)	Current year provision for bad and doubtful debts under section 36(1)(viia) [7.5% of gross total income of ₹ 800 lakhs [before deduction under section 36(1)(viia)] + 10% of aggregate average advances of ₹ 300 lakhs made by rural branches of the bank] = ₹ 60 lakhs +₹ 30 lakhs (See Note below)	90	190
Deduction under section 36(1)(vii) in respect of bad debts written off for A.Y.2014-15			20

Note: In case of a scheduled bank to which section 36(1)(viia) applies, the amount of deduction in respect of bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances.

(ii) Computation of total income of the trust for the Assessment Year 2014-15

Particulars	₹	₹
Income from property held under trust	8,16,000	
Voluntary contribution without any specific direction	19,20,000	27,36,000
Less: 15% of income accumulated or set apart as per section 11(1)(a)		4,10,400
		23,25,600
Less: Amount applied for charitable purposes		
Spent for charitable purposes	8,50,000	
Donation to public charitable trusts	84,560	9,34,560
		13,91,040
Less: ₹ 14,00,000, being the amount set apart for charitable hospital, restricted to (See Note 2)		13,91,040
Total Income		Nil

Notes:

1. By virtue of section 11(1)(d), voluntary contribution of ₹ 13,00,000 with specific direction that they shall form part of corpus of the trust is not includible in the total income of the trust.
2. The amount set apart for construction of a charitable hospital is not includible in the total income of the trust, assuming that a notice in writing was given to the Assessing Officer in the prescribed manner specifying the purpose for which income is being set apart and the period (not exceeding 5 years) for which it is

© The Institute of Chartered Accountants of India

set apart; further, the money set apart should be invested or deposited in the forms or modes specified in section 11(5).

(b) Computation of CENVAT credit available with Mr. Shiven

Particulars	₹
Dumpers (Note-1)	1,06,000
Electric transformer falling under Chapter 85 of Excise Tariff (Note-1)	40,000
Refrigerator fitted in office (Note-2)	Nil
Car for use of employees for coming to site and going back (Note-3)	Nil
Trucks, falling under tariff sub-heading 8704, used for the transport of construction material (Note-4)	15,000
Total	1,61,000
CENVAT credit available on capital goods(50% of ₹ 1,61,000) (Note-5)	80,500
Diesel for use in dumper (Note-6)	Nil
Total CENVAT credit available	80,500

Notes:

1. As per the definition of capital goods of the CENVAT Credit Rules, 2004, following goods are eligible capital goods for the purpose of claiming CENVAT credit:-
   (a) dumpers
   (b) goods falling under Chapter 85
2. Goods falling under specified Chapters, used for providing output service are eligible capital goods. However, in the given case, since the refrigerator is not used for providing output service, same is not eligible capital goods for service provider.
3. As per the definition of capital goods, motor vehicles for passengers are not eligible capital goods in case of construction service.
4. As per the definition of capital goods, motor vehicles used for transportation of inputs used for providing an output service are eligible capital goods.
5. As per Rule 4(2)(a) of the CENVAT Credit Rules, 2004, upto 50% CENVAT credit can be availed in case of capital goods in the year of purchase.
6. Diesel for use in dumper is excluded from the definition of inputs.

(c) Computation of assessable value and excise duty payable

Particulars	₹
Total invoice price (inclusive of taxes)	55,000

© The Institute of Chartered Accountants of India

*Less:*State VAT	5,500
Insurance charges [incurred after place of removal]	275
Outward freight charges [incurred beyond place of removal]	2,100
Price-cum-duty (a)	47,125
Less :Excise duty [Rate of excise duty is 50% of 12.36%, i.e. 6.18%] [₹ 47,125 × 6.18/106.18]	2,742.82
Total excise duty including education cesses (rounded off) (b)	2,743
Assessable value (a) – (b)	44,382

Note: Since packing charges are includible in assessable value, deduction for the same has not been provided.

Question 4

(a) *Mr. Anand, an employee of XYZ Co. Ltd. at Mumbai and covered by Payment of Gratuity Act, retires at the age of 64 years on 31-12-2013 after completing 33 years and 7 months of service. At the time of retirement, his employer pays ₹ 20,51,640 as Gratuity and ₹ 6,00,000 as accumulated balance of Recognised Provident fund. He is also entitled for monthly pension of ₹ 8,000. He gets 75% of pension commuted for ₹ 4,50,000 on 1st February, 2014.*

Determine the salary chargeable to tax for Mr. Anand for the Assessment Year 2014-15 with the help of following information:

	₹
Basic Salary (₹ 80,000 x 9)	*7,20,000*
Bonus	*36,000*
House Rent Allowance (₹ 15,000 x 9)	*1,35,000*
Rent paid by Mr. Anand (₹ 10,000 x 12)	*1,20,000*
Employer contribution towards Recognized Provident Fund	*1,10,000*
Professional Tax paid by Mr. Anand	*2,000*

Note: Salary and Pension falls due on the last day of each month. *(8 Marks)*

(b) *Mr. Vineet a service provider, received an advance of ₹ 1,00,000 from Mr. X on 05-04-2013 as part payment for a service. The service was completed on 10-04-2013 and the date of invoice was 16-05-2013. He received the remaining amount of ₹ 1,50,000 on 14-06-2013.*

Determine the point of taxation in the above case.

© The Institute of Chartered Accountants of India

Would your answer be different if the above service becomes taxable for the first time with effect from 01-06-2013? *(4 Marks)*

(c) *Vivitha & Co., a registered dealer in Ludhiana, furnishes the following details of purchases and sales pertaining to the month of March, 2014:*

	₹ (in lakhs)
Opening balance in VAT input credit brought forward	*0.20*
Purchases of raw materials within the State (final invoice value)	
From registered dealers	*26.00*
From dealers opting for Composition Scheme	*5.20*
Purchases from outside the State (final invoice value)	*10.20*
Sales within State of finished goods, excluding VAT	*40.00*
Input VAT rate for raw materials is 4%	
Output VAT rate is 10%.	

Determine the VAT liability of the dealer. *(4 Marks)*

Answer

(a) Computation of taxable salary of Mr. Anand for the Assessment Year 2014-15

Particulars	₹
Basic Salary (₹ 80,000 x 9)	7,20,000
Bonus	36,000
House Rent Allowance *(Working Note 1)*	1,17,000
Employer's contribution towards recognized provident fund in excess of 12% of salary [i.e., ₹ 1,10,000 – ₹ 86,400 (12% of ₹ 7,20,000)]	23,600
Gratuity *(Working Note 2)*	10,51,640
Uncommuted Pension [(₹ 8,000 x 1)+(₹ 2,000 x 2)]	12,000
Commuted Pension *(Working Note 3)*	2,50,000
Gross Salary	22,10,240
Less: Professional tax paid by Mr. Anand [deductible under section 16(iii)]	2,000
Taxable salary	22,08,240

Working Notes:

	Particulars	₹	₹
(1)	Taxable House Rent Allowance		
	Actual HRA Received		1,35,000

© The Institute of Chartered Accountants of India

	As per section 10(13A), least of the following is exempt:			
	(i) Actual HRA received		1,35,000	
	(ii) Excess of rent paid over 10% of salary (basic pay, in this case)			
	- Rent paid (₹ 10,000 x 9)	₹ 90,000		
	- *Less*: 10% of salary (i.e., 10% of ₹ 7,20,000)	₹ 72,000	18,000	
	(iii) 50% of salary (i.e., 50% of ₹ 7,20,000)		3,60,000	
	Least of the above			18,000
	Taxable HRA			1,17,000
(2)	Taxable Gratuity			
	Actual Gratuity received			20,51,640
	As per section 10(10), least of the following is exempt:			
	(i) Statutory limit		10,00,000	
	(ii) Actual gratuity received		20,51,640	
	(iii) 15 days salary for each completed year of service or part thereof in excess of 6 months i.e., 15/26 x 80,000 x 34		15,69,231	
	Least of the above			10,00,000
	Taxable Gratuity			10,51,640
(3)	Commuted Pension			
	Since Mr. Anand is a non-government employee in receipt of gratuity, exemption under section 10(10A), would be available to the extent of 1/3rd of the amount of the pension which he would have received had he commuted the whole of the pension.			
	Amount received (Commuted value of 75% of pension)			4,50,000
	Amount exempt from tax = (₹4,50,000 x 100/75) x 1/3			2,00,000
	Taxable amount			2,50,000
(4)	Accumulated balance of Recognized Provident Fund (RPF)			
	₹ 6 lakh, representing the accumulated balance of RPF, received on retirement is exempt since Mr. Anand has rendered a continuous service for a period of 5 years or more (33 years and 7 months) in XYZ Ltd.			

(b) As per rule 3 of the Point of Taxation Rules, 2011, if the invoice is not issued within 30 days of the completion of the provision of the service, point of taxation is:-

(i) date of completion of service, or

(ii) date of payment,

whichever is earlier.

© The Institute of Chartered Accountants of India

Further, advances received are taxable at the time when such advances are received. Thus, the point of taxation of the advance received by Mr. Vineet from Mr. X is 05.04.2013. Further, since the invoice has not been issued within 30 days from the date of completion of provision of service, point of taxation for the remaining amount is 10.04.2013 (date of completion of service).

As per rule 5 of the Point of Taxation Rules, 2011, where a service is taxed for the first time, no tax shall be payable if the payment has been received before such service becomes taxable and invoice has been issued:-

(a) within 14 days of the date when the service is taxed for the first time

or

(b) before such service became taxable.

In the given case, since the payment of ₹ 1,00,000 has been received in advance before service became taxable and invoice has also been issued before such service became taxable, no service tax is payable on said advance. However, for the remaining amount, service tax is payable as payment has been received after the service becomes taxable.

Notes:

1. *It has been assumed that aggregate value of services provided by Mr. Vineet in the preceding financial year was more than ₹ 50 lakh and hence, he does not have the option to pay tax on taxable services provided by him up to a total of ₹ 50 lakh in the current financial year, on receipt basis. Resultantly, he is required to pay service tax on accrual basis.*
2. *It is also possible to answer the second part of the above question on the basis of section 67A of the Finance Act, 1994 which provides that the applicable rate of service tax is the rate which is in force at the time when the taxable service has been provided. In that case, no service tax will be payable on ₹ 1,50,000.*

(c) Computation of Net VAT liability of Vivitha & Co. for the month of March, 2014

Particulars	₹ (in lakh)
Input VAT:	
Opening balance of input VAT credit	0.20
VAT paid on purchases of raw materials within the State from registered dealers [₹ 26 lakh × 4/104]	1.00
VAT paid on purchases of raw materials within the State from dealers opting for composition scheme [Such purchases are not eligible for input tax credit]	Nil
CST paid on purchases from outside the State [Inter-State purchases are not eligible for input tax credit]	Nil
Total input tax credit available (A)	1.20

© The Institute of Chartered Accountants of India

Output VAT:		
VAT @ 10% on sale of finished goods within the State [₹ 40 lakh × 10/100]	(B)	4.00
Net VAT liability [(B)-(A)]		2.80

Question 5

(a) (i) Mr. Gopi carrying on business as proprietor converted the same into a limited company by name Gopi Pipes (P) Ltd. from 01-07-2013. The details of the assets are given below:

	₹
Block - I WDV of plant & machinery (rate of depreciation @ 15%)	*12,00,000*
Block - II WDV of building (rate of depreciation @ 10%)	*25,00,000*

The company Gopi Pipes (P) Ltd. acquired plant and machinery in December 2013 for ₹ 10,00,000. It has been doing the business from 01-07-2013.

Compute the quantum of depreciation to be claimed by Mr. Gopi and successor Gopi Pipes (P) Ltd. for the assessment year 2014-15.

Note: Ignore additional depreciation. (4 Marks)

(ii) Name any four specified businesses covered under section 35AD and state the fiscal incentives available to such businesses. (4 Marks)

(b) (i) "Not all the services provided by an employee to the employers are outside the ambit of service". Explain the statement with reference to Service Tax law.

(ii) Discuss whether the following services are liable to service tax:

(1) Services provided on contract basis by a person to another

(2) Services provided by a casual worker to employer who gives wages on daily basis to the workers. (2 + 2 = 4 Marks)

(c) Discuss the validity of the following statements with reference to computation of tax liability under CST Act:

(i) Cost of freight, separately charged in the invoice, shall be deducted from sale price

(ii) Subsidy given by Government to manufacturers (selling the product at controlled price) to compensate cost of production will form part of sale price.

(iii) Charity or dharmada collected by dealer will not form part of sale price.

(iv) Free of cost material supplied by the customer will be added to the sale price.

(4 Marks)

Answer

(a) (i) Computation of depreciation allowable to Mr. Gopi for A.Y.2014-15

© The Institute of Chartered Accountants of India

Particulars	₹	₹
Block 1 Plant and Machinery (15% rate)		
WDV as on 1.4.2013	12,00,000	
Depreciation@15%		1,80,000
Block 2 Building (10% rate)		
WDV as on 1.4.2013	25,00,000	
Depreciation@10%		2,50,000
Total depreciation for the year		4,30,000
Proportionate depreciation allowable to Mr. Gopi for 91 days (i.e., from 1.4.2013 to 30.6.2013) [i.e., 91/365 x ₹ 4,30,000)		1,07,205

Computation of depreciation allowable to Gopi Pipes (P) Ltd. for A.Y.2014-15

Particulars	₹
(i) Depreciation on building and plant and machinery Proportionately for 274 days (i.e. from 1.7.2013 to 31.3.2014) (274/365 x 4,30,000)	3,22,795
(ii) Depreciation@ 50% of 15% on ₹10 lakh, being the value of plant and machinery purchased after conversion, which was put to use for less than 180 days during the P.Y. 2013-14	75,000
Depreciation allowable to Gopi Pipes (P) Ltd.	3,97,795

Note: As per the fifth proviso to section 32(1), in the case of conversion of sole proprietary concern into a company as per section 47(xiv), the depreciation should be first calculated for the whole year as if no succession had taken place. Thereafter, the depreciation should be apportioned between the sole proprietary concern and the company in the ratio of the number of days for which the assets were used by them. It is assumed that in this case, the conditions specified in section 47(xiv) are satisfied.

(ii) Specified businesses covered under section 35AD

The following specified businesses are eligible for investment linked tax deduction under section 35AD –

(1) setting-up and operating a cold chain facility;

(2) setting-up and operating a warehousing facility for storing agricultural produce;

(3) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral

© The Institute of Chartered Accountants of India

part of such network;

(4) building and operating a hotel of two-star or above category, anywhere in India;

(5) building and operating a hospital, anywhere in India, with at least 100 beds for patients;

(6) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the CBDT in accordance with the prescribed guidelines.

(7) developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government;

(8) production of fertilizer in India;

(9) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

(10) bee-keeping and production of honey and beeswax; and

(11) setting up and operating a warehousing facility for storage of sugar.

(Note : Any 4 of the above businesses may be given in the answer)

Fiscal incentives available in respect of such specified businesses:

(1) Capital expenditure incurred during the previous year, wholly and exclusively for such specified business (including capital expenditure incurred before commencement of operations and capitalized in the books of account on the date of commencement of operations) would be allowed as deduction from the business income.

However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

(2) 100% of such capital expenditure is allowed as deduction.

In case of certain specified businesses, weighted deduction@150% of the capital expenditure (including capital expenditure incurred before commencement of operations and capitalized in the books of account on the date of commencement of operations) is allowable, under section 35AD(1A) if they commence operations on or after 1st April, 2012. These specified businesses are –

- setting up and operating a cold chain facility;
- setting up and operating a warehousing facility for storage of agricultural produce;

© The Institute of Chartered Accountants of India

- building and operating, anywhere in India, a hospital with at least 100 beds for patients;
- developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government; and production of fertilizer in India.

(3) Under section 73A, the loss from specified business can be carried forward indefinitely for set-off against profits of the same or any other specified business. It is not essential that the return of income should be filed within the time specified under section 139(1) for carrying forward such loss.

(b) (i) "Not all the services provided by an employee to the employer are outside the ambit of services". The significance of this statement is that services that are provided by the employee to the employer in the course of employment are only outside the ambit of definition of service as per section 65B(44) of the Finance Act, 1994. Services provided outside the ambit of employment for a consideration would be a service.

(ii) (1) As per section 65B(44) of the Finance Act, 1994, service does not include a provision of service by an employee to the employer in the course of or in relation to his employment. Service provided on contract basis by a person to another are not provided in the course of employment and hence, is a service in terms of section 65B(44) of the Finance Act, 1994. Therefore, such services would be liable to tax.

(2) Services provided by a casual worker to employer who gives wages on daily basis to the workers are services provided by the worker in the course of employment which comes under the exclusions of definition of service under section 65B(44) of the Finance Act, 1994. Hence, such services are not liable to service tax.

(c) (i) The statement is valid. The cost of freight is excluded from the sale price where such cost is separately charged by the dealer in the invoice.

(ii) The statement is not valid. Where a product is 'controlled' and has to be sold at 'controlled price', subsidies are granted by the Government to manufacturers to compensate the cost of production, which is usually higher than the 'controlled price'. Such subsidy will not form part of sale price.

(iii) The statement is not valid. Charity / Dharmada collected by dealer will form part of sale price because so far as the purchaser is concerned, he has to pay the whole amount for purchasing the goods.

(iv) The statement is not valid. Under CST Act, free of cost material supplied by buyer is not required to be added.

© The Institute of Chartered Accountants of India

Question 6

(a) (i) Determine the eligibility and quantum of deduction under Chapter VI-A in the following cases:

(1) Subscription to notified long-term infrastructure bonds ₹ 30,000 paid by Mr. A, who also paid life insurance premium of ₹ 70,000 during the year. (Sum Assured ₹ 3,50,000, policy issued on 31-03-2011)

(2) Contribution to notified pension scheme (referred to in section 80CCD) by the employer ₹ 40,000 for an employee whose basic salary plus dearness allowance is ₹ 3,00,000 for the year. (4 Marks)

(ii) Mr. Mittal has four minor children consisting of three daughters and one son. The annual income of all the children for the Assessment Year 2014-15 were as follows:

	₹
First daughter (Including Scholarship received ₹ 5,000)	10,000
Second Daughter	8,500
Third Daughter (Suffering from disability specified U/s 80U)	4,500
Son	40,000

Mr. Mittal gifted ₹ 2,00,000 to his minor son who invested the same in the business and derived income of ₹ 20,000 which is included above.

Compute the amount of Income earned by minor children to be clubbed in the hands of Mr. Mittal. (4 Marks)

(b) Gupta Associates, a firm of lawyers, rendered legal Advice to Mr. Das, an Architect, and Surya Ltd., an Advertising agency during December, 2013. Both Mr. Das and Surya Ltd. are not entitled for small service provider exemption in the year 2013-14.

Who is Liable to pay service tax in this case? Will your answer be different if Mr. Das and Surya Ltd. sought legal Advice from Mr. Dev a Lawyer? (5 Marks)

(c) Mittal Brothers are the manufacturers of certain non-excisable goods. They manufactured goods worth ₹ 2,00,000 on 25-06-2013. These goods were removed from the factory on 20-09-2013. On 01-09-2013 these goods were brought within the purview of the Tariff and chargeable to duty @12%.

Discuss the leviability of excise duty on the goods manufactured by Mittal Brothers. (3 Marks)

Answer

(a) (i) Eligibility and quantum of deduction under Chapter VI-A for A.Y.2014-15

(1) No deduction would be allowable under Chapter VI-A for A.Y.2014-15, for subscription to notified long-term infrastructure bonds by Mr. A.

© The Institute of Chartered Accountants of India

Note: Deduction under section 80CCF in respect of subscription to long-term infrastructure bonds was available only for A.Y. 2011-12 and A.Y. 2012-13. Hence, no deduction would be allowable under section 80CCF for A.Y. 2014-15 for subscription to notified long-term infrastructure bonds by Mr. A.

Mr. A would be eligible for deduction under section 80C in respect of premium paid to insure his life.

Mr. A would be eligible for deduction of the entire amount of ₹ 70,000, being life insurance premium paid on policy issued before 1.4.2012, since the premium does not exceed 20% of ₹ 3,50,000, being the sum assured.

(2) Employer's contribution to notified pension scheme qualifies for deduction under section 80CCD.

The deduction under section 80CCD would be restricted to ₹30,000 (being 10% of ₹3,00,000), even though the entire employer's contribution of ₹40,000 to notified pension scheme would be included in salary as per section 17(1)(viii).

However, the deduction of employer's contribution of ₹ 30,000 to pension scheme would be over and above the deductions which are subject to the limit of ₹ 1 lakh under section 80CCE.

(ii) Computation of income earned by minor children to be clubbed with the income of Mr. Mittal

	Particulars	₹
(i)	Income of first daughter *[See Notes 1 & 2]*	5,000
	Less: Income exempt under section 10(32) *[See Note 4]*	1,500
	Income to be clubbed	3,500
(ii)	Income of second daughter *[See Note 1]*	8,500
	Less: Income exempt under section 10(32) *[See Note 4]*	1,500
	Income to be clubbed	7,000
(iii)	Income of son *[See Note 5]*	40,000
	Less: Income exempt under section 10(32) *[See Note 4]*	1,500
	Income to be clubbed	38,500
	Total Income to be clubbed as per section 64(1A) [(i)+(ii)+(iii)]	49,000

Notes:

(1) As per section 64(1A), in computing the total income of an individual, all such income accruing or arising to his minor child shall be included.

© The Institute of Chartered Accountants of India

(2) The income accruing or arising to a minor child on account of activity involving application of their skill, talent or specialized knowledge and experience is not includible in the total income of the parent. Therefore scholarship received by the first daughter is not includible in the hands of Mr. Mittal, assuming that the same is received on account of skill, talent or specialized knowledge of the minor daughter. The balance income of ₹5,000 (₹10,000 – ₹5,000) is includible in the hands of Mr. Mittal after providing deduction of ₹1,500 under section 10(32).

(3) Further, as per the provisions of section 64(1A), income of a minor child suffering from any disability of the nature specified in section 80U would not be included in the total income of the parent. Therefore, in this case, the income of third daughter suffering from disability specified under section 80U is not includible in the total income of Mr. Mittal.

(4) Under section 10(32), income of each minor child includible in the hands of the parent under section 64(1A) would be exempt to the extent of the actual income or ₹1,500, whichever is lower.

(5) The specific provision under *Explanation 3* to section 64 for inclusion of income from business where the assets transferred directly or indirectly by an individual are invested by the transferee in business are applicable in cases of transfer to spouse or son's wife only. In case of minor, all income accruing or arising to him or her is, in any case, includible in the hands of the parent.

(b) Where taxable services are provided to any business entity by an individual advocate or a firm of advocates by way of legal services, person liable to pay service tax is the person receiving such service.

Further, services provided by an individual advocate or a partnership firm of advocates by way of legal services to, *inter alia,* a business entity with a turnover up to ₹ 10 lakh in the preceding financial year are exempt from service tax as per Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*.

In the given case, turnover of services of both Mr. Das and Surya Ltd. would have been more than ₹ 10 lakh in the preceding financial year as they are not entitled to small service provider exemption in the year 2013-14. Hence, legal services provided by Gupta Associates (firm of lawyers) or Mr. Dev (individual lawyer) during December, 2013 will not be exempt from service tax.

The receivers of service, Dev and Surya Ltd., will be liable to pay service tax, in the first situation.

In the second situation also, the answer will not change. Service tax will be payable by service receivers, Mr. Das and Surya Ltd. irrespective of whether the legal advice is sought from Mr. Dev, an individual lawyer.

© The Institute of Chartered Accountants of India

(c) As per charging section 3 of the Central Excise Act, 1944, excise duty is levied on all excisable goods which are produced or manufactured in India. However, as per rule 5 of the Central Excise Rules, 2002, the rate of duty applicable to any excisable goods is the rate in force on the date when such goods are removed from the factory.

In the given case, the goods were non-excisable at the time of manufacture. Hence, excise duty liability will not arise even though such goods have been made excisable by bringing them under Tariff prior to their removal.

Question 7

(a) Answer any two of the following three sub divisions:

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

(1) Payment of ₹ 27,000 made to Jacques Kallis, a South African cricketer, by an Indian newspaper agency on 02-07-2013 for contribution of articles in relation to the sport of cricket.

(2) Rent of ₹ 1,70,000 paid by a partnership firm for use of plant and machinery.

(3) Winning from horse race ₹ 1,50,000.

(4) ₹ 2,00,000 paid to Mr. A, a resident individual, on 22-02-2014 by the State of Uttar Pradesh on compulsory acquisition of his urban land. (4 Marks)

(ii) "Filing of Return of Income on or before due date is necessary for carry forward of losses". Discuss the correctness of this statement. (4 Marks)

(iii) Is a political party required to file return of Income? State the provisions applicable under the Income-tax Act, 1961. (4 Marks)

(b) Compute the interest payable on delayed payment of service tax by service provider in following cases:

Name of the service provider	*PQR Ltd.*	*Mr. Manik*
Service tax liability	*₹ 1,23,600*	*₹ 2,16,000*
Delay in payment of service tax	*20 Days*	*25 Days*

Aggregate value of taxable services rendered in previous financial year 2012-13 by PQR Ltd. was ₹ 40,00,000 and by Mr. Manik was ₹ 62,00,000.

Assume that service tax liability and delay given above relates to Financial Year 2013-14. (4 Marks)

(c) R R Pharma Ltd. manufactures a particular drug, which is not covered by MRP. On 12-3-2014, 2000 units of this drug were cleared from the factory for distribution as free samples to physicians. The MRP of a unit is ₹ 202, inclusive of VAT at 1% and excise duty at 12.36%. Cost of production per unit is ₹ 160 per unit.

© The Institute of Chartered Accountants of India

The company has approached you with the following views:

(i) Free samples given to the doctors cannot be sold by anyone, as per the Drug Control Act; hence they are not marketable. As a logical corollary, excise duty is not leviable;

(ii) If this has to be valued, the company makes no profit and hence should be valued at cost.

Advise the company suitably, as regards the value to be adopted for the free samples.

(4 Marks)

Answer

(a) (i) (1) Section 194E provides that the person responsible for payment of any amount to a non-resident sportsman for contribution of articles relating to any game or sport in India in a newspaper has to deduct tax at source @ 20%. Further, since Jacques Kallis, a South African cricketer, is a non-resident, education cess @2% and secondary and higher education cess @1% on TDS should also be added.

Therefore, tax to be deducted = ₹ 27,000 x 20.60% = ₹ 5,562.

(2) As per section 194-I, tax is to be deducted at source @ 2% on payment of rent for use of plant and machinery, only if the payment exceeds ₹ 1,80,000 during the financial year.

Since rent of ₹ 1,70,000 paid by a partnership firm does not exceed ₹1,80,000, tax is not deductible.

(3) Under section 194BB, tax is to be deducted at source, if the winnings from horse races exceed ₹ 5,000. The rate of deduction of tax at source is 30%. Assuming that winnings are paid to the residents, education cess@2% and secondary and higher education cess@1% has not been added to the tax rate of 30%.

Hence, tax to be deducted = ₹ 1,50,000 x 30% = ₹ 45,000.

(4) As per section 194LA, any person responsible for payment to a resident, any sum in the nature of compensation or consideration on account of compulsory acquisition under any law, of any immovable property, is required to deduct tax at source @ 10%, if such payment or the aggregate amount of such payments to the resident during the financial year exceeds ₹ 2,00,000.

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

(ii) Section 139(3) requires furnishing of return of loss on or before the due date specified under section 139(1), as a pre-condition for carry forward of the following losses –

(1) business loss under section 72(1) or

© The Institute of Chartered Accountants of India

(2) speculation business loss under section 73(2) or

(3) loss under the head "Capital gains" under section 74(1) or

(4) loss from the activity of owning and maintaining race horses under section 74A(3).

Further, section 80 provides that an assessee cannot carry forward and set off the above losses unless the loss has been determined in pursuance of a return of loss filed in accordance with the provisions of section 139(3).

However, loss from specified business under section 73A(2), loss under the head "Income from house property" under section 71B and unabsorbed depreciation under section 32(2) can be carried forward for set-off even though return of loss has not been filed before the due date specified under section 139(1).

Therefore, the statement "Filing of return of income on or before due date is necessary for carry forward of losses" is partly correct.

(iii) Yes, a political party is required to file return of income if, without giving effect to the exemption provisions under section 13A, the total income of the political party exceeds the basic exemption limit.

In such cases, as per section 139(4B), the chief executive officer of the political party is required to furnish a return of income of the party of the previous year within the due date prescribed under section 139(1).

For the purpose of claiming exemption under section 13A, the accounts of the political party have to be audited by a Chartered Accountant. Consequently, the due date of filing return for such political parties would be 30th September of the assessment year.

In other cases, the due date of filing of return would be 31st July of the assessment year.

The return must be filed in the prescribed form and verified in the prescribed manner setting forth such other particulars as may be prescribed by the CBDT.

The provisions of the Income-tax Act, 1961 would apply as if it were a return required to be furnished under section 139(1).

(b) Computation of interest on delayed payment of service tax

Name of the service provider	PQR Ltd.	Mr. Manik
Service tax liability	₹ 1,23,600	₹ 2,16,000
Delay in payment of service tax	20 days	25 days
Value of taxable services in previous financial year	₹ 40,00,000	₹ 62,00,000
Rate of interest	15% per annum	18% per annum

© The Institute of Chartered Accountants of India

Interest (rounded off)	[₹ 1,23,600 x (15/100) x (20/365)] =₹ 1,016	[₹ 2,16,000 x (18/100) x (25/365)] =₹ 2,663

Note: As per section 75 of Finance Act, 1994 delay in payment of service tax attracts interest @ 18% per annum. However, the applicable rate gets reduced by 3% for service providers whose turnover of services does not exceed ₹ 60 lakh in the preceding financial year.

(c) The taxable event for levy of excise duty is manufacture of goods. Manufacture must result in goods that are movable and marketable. Thus, marketability is an essential condition for levying excise duty. Marketability is the capability of being brought and sold for a consideration. However, actual sale is not a necessary condition for charging excise duty.

In the given case, though samples cannot be sold by anyone as per Drug Control Act, it does not mean that such samples are not capable of being sold for a consideration. Since samples given to physicians are capable of being sold in open market, the same are excisable goods and thus, liable to excise duty.

Further, Drugs Control Act and Central Excise Act, 1944 operate in different fields, therefore, the restrictions imposed under Drugs Act cannot lead to non-levy of excise duty under the Central Excise Act*.

Thus, the Company's view that free samples are not marketable is not correct.

If the product is not covered under MRP provisions, valuation provisions under section 4A of the Central Excise Act, 1944 will not apply. Thus, samples can neither be valued under section 4A nor at cost (as suggested by the company) as valuation of excisable goods at cost is not provided under Central Excise Act, 1944. Therefore, samples will have to be valued under section 4 of Central Excise Act, 1944.

However, since the samples are not sold by the assessee, the same cannot be valued in terms of transaction value under section 4 of Central Excise Act, 1944 but on the basis of value of identical goods cleared at or around the same time. Thus, the assessable value of free samples would be ₹ 178 (excluding VAT @ 1% and excise duty @ 12.36%).

* As held by Supreme Court in the case of *Medley Pharmaceuticals v. CCE (2011) 263 ELT 641 (SC),*

© The Institute of Chartered Accountants of India