

Direct and Indirect Taxation-Law and Practice

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 6

NOTE : All references to sections mentioned in Part-A of the Question Paper relate to the Income-tax Act, 1961 and the relevant Assessment Year 2010-11 unless stated otherwise.

P A R T – A

(Answer ANY TWO questions from this part.)

1. (a) Discuss, with the help of case law, if any, the taxability of the following incomes in case of a foreign company, assuming that the Indian subsidiary has no authority to enter into or conclude contracts on behalf of the foreign company :
 - (i) Income derived from back office operations performed by its Indian subsidiary.

(4 marks)
 - (ii) Income from providing stewardship services to its Indian subsidiary involving briefing of the staff of the Indian company to ensure that the output meets the requirements of foreign company.

(4 marks)
- (b) A company was illegally manufacturing and selling heroin. The heroin held as stock-in-trade was seized and confiscated. The company claimed such seizure and confiscation as business loss. Discuss the correctness or otherwise of company's claim.

(4 marks)
- (c) A company had two thermal power plants of generating capacity of 67.5 MW each for its captive power plant. It purchased a turbine rotor at a cost of Rs.1.2 crore and claimed deduction as revenue expenditure stating that the turbine rotor was an essential part of turbo generator set. Do you agree with company's claim ? Explain briefly.

(4 marks)
- (d) Mahaveer Marbles Ltd. is engaged in cutting of marble blocks into slabs and tiles and claiming that it is entitled to deduction under section 80-IB. The department has denied the deduction saying that one of the conditions to be fulfilled by an industrial undertaking for the purpose of claiming deduction under section 80-IB is that it should manufacture or produce any article or thing, not being an article or thing specified in the list in Eleventh Schedule. As the cutting of marble blocks into slabs and tiles does not amount to manufacture, deduction under section 80-IB cannot be allowed. Is the argument of department tenable in law ?

(4 marks)

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2. (a) An assessee, who is aggrieved by all or any of the following orders, is desirous to know the available remedial recourse and the time limit therefor under the Income-tax Act, 1961 in respect of –
- (i) order passed under section 143(3) by the Assessing Officer;
 - (ii) order passed under section 263 by the Commissioner of Income-tax;
 - (iii) order passed under section 272A by the Director General; and
 - (iv) order passed under section 254 by the Income-tax Appellate Tribunal (ITAT).
- (2 marks each)*
- (b) "Income-tax Act, 1961 extends to whole of India." What meaning has been assigned to 'India' under this Act ?
- (6 marks)*
- (c) Explain the conditions which are required to be fulfilled by both the predecessor and successor co-operative banks in order to claim benefit of section 72AB.
- (6 marks)*
3. (a) What is the meaning attributed to 'disaster' under the Income-tax Act, 1961 ? Is there any exemption under the Act in respect of compensation received on account of disaster ?
- (2 marks)*
- (b) State, with reasons in brief, whether the following statements are correct or incorrect :
- (i) Medical insurance premium paid by the employer to insure the health of his employees would qualify for deduction under section 36(1) (ib) only, if the same is paid by cheque.
 - (ii) Under section 80E, deduction is allowable in respect of interest on loan taken for higher education of self alone.
 - (iii) The disallowance under section 40A(3) in respect of expenditure for which payments exceeding Rs.20,000 have been made otherwise than by account payee cheque or account payee bank draft is 20% of the expenditure.
 - (iv) Minimum alternate tax (MAT) provisions are not attracted in respect of units claiming exemption under section 10A and section 10B.
 - (v) Tax is deductible @ 5% in respect of payment of fees for professional services to a resident.
- (2 marks each)*
- (c) "All types of land held by an assessee on the valuation date are treated as 'urban land' under the Wealth-tax Act, 1957." Examine the correctness of the statement.
- (3 marks)*
- (d) Discuss whether an assessee can claim relief under section 89 as well as the exemption under section 10(10C).
- (5 marks)*

P A R T – B

(Answer ANY FOUR questions from this part.)

4. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Powers given to Parliament by Entry No.97 of List I of Seventh Schedule to the Constitution of India are called _____.
- (ii) Rule _____ of the Central Excise Rules, 2002 provides for self-assessment of duty.
- (iii) Export of taxable services means service provided from India and used outside India and payment for such service is received by the service provider in _____.
- (iv) If imported car is exported after use for 20 months, the duty drawback given is _____ of duty paid on import.
- (v) Central sales tax is levied by the Central Government, it is administered by the State Governments and tax collected in each State is _____ by that State Government.
- (vi) Promissory estoppel cannot be pleaded against the government because withdrawal of the exemption notification under section 25 of the Customs Act, 1962 is _____.
- (vii) CENVAT Scheme offers considerable scope of _____.

(1 mark each)

(b) Distinguish between the following :

- (i) 'Production' and 'manufacture' under the central excise law.
- (ii) 'Seizure' and 'confiscation' under the customs law.

(4 marks each)

5. (a) A show cause notice has been served on Aman Products Ltd. under proviso to section 11A(1) of the Central Excise Act, 1944 demanding duty short paid and interest payable thereon under section 11AB. In addition, the assessee has been made liable to pay penalty equal to the duty short paid under section 11AC of the said Act.

The management has approached you to seek your advice if penalty amount could be reduced by adjudicating authority. Give your advice citing case law, if any.

(5 marks)

(b) SP Silk House had imported certain goods and kept them in warehouse. However, the goods were not removed from the warehouse at the expiration of the statutory time period during which such goods were permitted under section 61 of the Customs Act, 1962 to remain in a warehouse.

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The assessee sought to relinquish the title to such goods under the proviso to section 68. However, the department contended that since the goods were deemed to be improperly removed from the warehouse under section 72(1) (b) considering the overstay of such goods in the warehouse, the case would not fall under section 68 and thus proviso to section 68 could not be invoked; and the assessee was liable to pay full amount of duty.

Discuss, in light of a decided case law, if any, whether contention of the department is tenable in law.

(5 marks)

- (c) Bhanu Industries is providing canteen facility in its factory for its employees. It is availing CENVAT credit on the strength of the invoices issued by the service provider. The question under consideration in this case is whether outdoor catering services can be regarded as an input service under Rule 2(1) of the CENVAT Credit Rules, 2004. Explain, in brief, with the help of decided case law, if any.

(5 marks)

6. (a) Action Ltd. is a manufacturing unit situated in Pune. In the financial year 2008-09, the total value of clearances for the unit was Rs.520 lakh. The break-up of clearances is as under :

- (i) Clearance without payment of duty to a unit in software technology park : Rs.100 lakh.
- (ii) Clearance of non-excisable goods : Rs.110 lakh.
- (iii) Clearance worth Rs.60 lakh which are used captively to manufacture finished products that are exempt under notification other than Notification No. 8/2003.
- (iv) Clearance of excisable goods in the normal course : Rs.250 lakh.

Part of the factory is used by Action Ltd. and another part of same factory is used by Passion Ltd. Passion Ltd. had cleared goods worth Rs.100 lakh, which were exempt under notification other than SSI exemption notification during financial year 2008-09.

Briefly explain whether Action Ltd. will be eligible to the benefits of exemption under Notification No.8/2003 for the year 2009-10.

(5 marks)

- (b) Care Energy Ltd. imported a lift from England at an invoice price of Rs.20,00,000. The assessee had supplied raw material worth Rs.5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to Rs.25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was Rs.50,000. The importer was also required to pay ship demurrage charges Rs.10,000.

The lift was imported at an actual cost of transport Rs.45,000 and insurance charges Rs.20,000. Compute its assessable value.

(5 marks)

- (c) A beauty parlour charged Rs.11,51,000 from clients for the quarter ending 31st December, 2009 for providing beauty treatment services. The break-up of the bills is as follows :

- (i) Labour and facility charges : Rs.6,00,000.
- (ii) Value of cosmetics and toilet preparations consumed in providing the services : Rs.4,00,000.
- (iii) Value of cosmetics and toilet preparations sold to the clients : Rs.1,51,000.

What is the amount and last date of service tax payable in case of e-payment by the beauty parlour ?

(5 marks)

7. (a) (i) Is the penalty under section 76 and under section 78 of the Finance Act, 1994 imposable simultaneously for non-payment of service tax on account of suppression of facts ?

(2 marks)

- (ii) Notification No.6/2005 ST dated 1st March, 2005, as amended, provides an exemption to taxable services of aggregate value not exceeding Rs.10 lakh in any financial year. What are the categories of persons who have been excluded from the purview of exemption notification ?

(4 marks)

- (b) Explain the concept of 'related' under the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007.

(5 marks)

- (c) Explain the rule governing the determination of assessable value of the excisable goods manufactured by a job-worker on behalf of principal manufacturer.

(4 marks)

8. (a) State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) Merchant exporter can clear goods for export without payment of duty by issuing 'letter of undertaking', execution of bond is not necessary.
- (ii) Services provided by a Practising Company Secretary in his professional capacity to a client, relating to appearance before revenue authorities in respect of issues relating to refund claims are exempt from service tax.
- (iii) Under section 46(1) of the Customs Act, 1962, an importer of any goods, other than goods intended for transshipment, is required to file a bill of entry.

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- (iv) Sale of food articles in hotel or restaurant is 'deemed sale' and can be taxed under the Central Sales Tax Act, 1956.
- (v) As a measure of sales tax planning, one should know that there can be inter-State sale of goods in works contract and Form-C can be issued/received.
- (vi) A gazetted officer of customs can, on his own motion, summon persons to give evidence and produce documents.

(2 marks each)

- (b) A registered dealer of Hyderabad sold goods worth Rs.10,20,000 (including 2% central sales tax) to a Government College in Karnataka State in December, 2009. Calculate the amount of central sales tax payable, if the rate of tax on such goods in Andhra Pradesh is 12.5%.

(3 marks)

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