

PAPER – 5 : INCOME-TAX AND CENTRAL SALES TAX

QUESTIONS

1. Choose the correct answer having regard to the provisions of the Income-tax Act, 1961–
 - (a) In respect of an accommodation owned by the employer in Mumbai, there would be deemed to be a concession in the matter of rent if the rent recovered from the employee is less than –
 - (i) 20% of salary;
 - (ii) 15% of salary;
 - (iii) 10% of salary;
 - (iv) 5% of salary.
 - (b) Medical insurance premium paid by the employer to insure the health of his employees would qualify for deduction under section 36(1)(ib) for A.Y.2008-09 -
 - (i) only if the same is paid by cheque;
 - (ii) only if the same is paid by cash;
 - (iii) only if the same is paid by credit card;
 - (iv) if it is paid by any mode other than cash.
 - (c) 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 –
 - (i) 100% of the expenditure;
 - (ii) 50% of the expenditure;
 - (iii) 20% of the expenditure;
 - (iv) Nil
 - (d) Personal effects exclude –
 - (i) archaeological collections;
 - (ii) drawings;
 - (iii) paintings;
 - (iv) all of the above.
 - (e) Under section 80E, deduction is allowable for A.Y.2008-09 in respect of interest on loan taken for –
 - (i) primary or higher education of self alone;
 - (ii) higher education of self alone;
 - (iii) primary or higher education of self, spouse and children;
 - (iv) higher education of self, spouse and children.
2. Miss Daisy, an Australian, got married to Mr. Krishna of India in Australia on 1.11.06 and came to India for the first time on 16.3.07. She remained in India up to 17.9.07 and left for Australia on 18.9.07. She returned to India again on 25.3.08. While in India, she had purchased a shop in Calcutta on 16.5.07, which was leased out to a company on a rent of Rs.18,000 p.m. from 1.6.07. She had taken loan from a bank for purchase of this shop on which bank had charged interest of Rs.85,400 upto 31.3.08. She had received the following gifts during the period 1.4.07 to 31.8.07:

- From parents of her husband	Rs.1,01,000
- From sister-in-law of her husband	Rs.51,000
- From three close friends of her parents-in-law, Rs.21,000 each	Rs.63,000

Determine her residential status and compute the total income chargeable to tax alongwith the amount of tax payable on such income for the A.Y. 2008-09.

3. Mr. Alok Sharma furnishes the following particulars of his income earned during the previous year relevant to the assessment year 2008-09:

Particulars	Amount in Rs.
Rent from property in Sri Lanka, received there.	40,000
Interest on debentures in an Indian company received in Sri Lanka	8,000
Fees for technical services rendered in Bombay but received in Sri Lanka	15,000
Pension for services rendered in India but received in Sri Lanka	6,000
Past foreign untaxed income brought to India during the previous year	7,000
Income from agricultural land in Sri Lanka received there and then brought to India	12,000
Income from profession in Sri Lanka which was set up in India, received there but spent in India	40,000
Gifts received on the occasion of his birthday	40,000
Interest on savings bank deposit in Indian Bank	13,000

Find out the gross total income of Mr. Alok Sharma, if he is (i) resident and ordinarily resident in India, (ii) resident but not ordinarily resident in India, or (iii) non-resident in India for the assessment year 2008-09.

4. Fill in the blanks, having regard to the provisions of Income-tax Act, 1961:
- In case of Mr. X, aged 35 years, who has taken a mediclaim policy, the maximum permissible deduction under section 80D for A.Y.2008-09 is -----.
 - Mrs. Sheela, aged 64 years, is resident in India. The basic exemption limit available to her for A.Y.2008-09 is -----.
 - The time limit for completion of assessment of a non-resident engaged in shipping business is ----- from the end of the financial year in which the return under section 172(3) is furnished.
 - The maximum investment which can be made during the P.Y.2007-08 by any assessee in bonds of NHA/RECL for the purpose of section 54EC exemption is -----.
 - Mr. Y is a resident individual, 62 years of age. The basic exemption limit for income-tax in his case for A.Y.2008-09 is -----.
5. Mr. Hari, aged 60 years, who retired from the services of the Central Government on 30.6.07, furnishes particulars of his income and other details as under:

Salary @ Rs.8,000 p.m.

Pension @ Rs.4,000 p.m. for July' 07 to November' 07.

On 1.12.2007, he got 1/4th of his pension commuted for Rs.1,00,000.

A house plot at Chennai, sold on 14.2.08 for Rs.11,00,000, had been purchased by him on 4.5.76 for Rs.80,000. The stamp valuation authority had assessed the value of said house plot at Rs.12,00,000 which was neither disputed by the buyer nor by him. The fair market value of this house plot as on 1.4.81 was Rs.1,50,000 (The cost inflation index for the financial year 2007-08 is 551).

He received interest of Rs.53,000 from bank FDRs, dividend of Rs.12,000 on mutual fund units and interest of Rs.46,000 on maturity of NSC out of which an amount of Rs.42,000 was already disclosed by him on accrual basis in the returns up to A.Y. 2007-08.

He invested Rs.30,000 in purchase of NSC and paid mediclaim insurance premium of Rs.15,000 for self by cheque.

Compute the total income of Mr. Hari for A.Y. 2008-09.

6. Write short notes on the following -
 - (a) Exemption in respect of disaster compensation;
 - (b) Capital gains in respect of sweat equity shares.
7. The Finance Act, 2007 has widened the scope of benefit under section 80-IA. Discuss the correctness or otherwise of this statement.
8. XYZ Ltd., which follows mercantile system of accounting, obtained licence on 1.6.2006 from the Department of telecommunication for a period of 10 years. The total licence fee payable is Rs.36,00,000. The relevant details are:

Year ended 31 st March	Licence fee payable for the year (Rs.)	Payments made	
		Date	Amount (Rs.)
2007	20,00,000	28.03.07	7,40,000
		16.07.07	12,60,000
2008	16,00,000	15.03.08	10,80,000

Balance of Rs.5,20,000 is pending as on 31.3.2008.

Compute the amount of deduction available to XYZ Ltd. under section 35ABB for the assessment year 2008-09. Can any deduction be claimed under section 32 also?

9. Mrs. Geetha, a resident Indian, born on 6th January, 1943 furnishes the following particulars for the P.Y.2007-08 -

	Rs.
Long-term capital gains on sale of house.	4,00,000
Short-term capital gains on sale of shares in ABC Pvt. Ltd.	50,000
Prize winnings from lotteries	12,000
Business income	3,50,000
Net agricultural income	52,000
Mrs. Geetha has paid the following:	
LIC premium of self	30,000
LIC premium of husband	20,000

Compute the tax payable by Mrs. Geetha for the assessment year 2008-09.

10. The Finance Act, 2007 has provided a tax holiday in respect of profits and gains from eligible business of certain undertakings in North-Eastern States – Elucidate this statement.
11. State with reasons, whether the following statements are true or false:
 - (a) Surcharge@10% is attracted in the case of domestic companies irrespective of the total income of the company.
 - (b) Furnishing return of income on or before the due date is mandatory for claiming exemption under any section in Chapter VI-A.
 - (c) Section 80-ID provides a deduction of 100% of profits and gains derived by an undertaking from the business of hotel in the Northern Capital Region for a period of 10 consecutive assessment years.

- (d) Mr. Sridhar, a non-resident Indian 66 years of age, is eligible for a basic exemption limit of Rs.1,95,000.
- (e) Income by way of interest, royalty and fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1) is includible in the total income of a non-resident only if the non-resident has a residence or place of business or business connection in India.
12. Delta Co-operative Bank amalgamated with Gamma Co-operative Bank on 1.12.2007. The depreciation for the year ended 31.3.2008 calculated as per Income-tax Rules that would have been allowable to Delta Co-operative Bank had the amalgamation not taken place amounts to Rs.1,20,000. Compute the deduction on account of depreciation allowable in the hands of Delta Co-operative Bank and Gamma Co-operative Bank for A.Y.2008-09. Explain the method of computing such deduction and the conditions to be fulfilled to avail such deduction.
13. Is it necessary for the Assessing Officer to give the assessee an opportunity of being heard before issuing directions under section 142(2A) for special audit?
14. What is the tax benefit available to an assessee engaged in the business of hotel or business of building, owning and operating a convention centre in the Northern Capital Region and what are the conditions to be fulfilled for availing such tax benefit?
15. Discuss the provisions of section 139C and section 139D which empower the Central Board of Direct Taxes (CBDT) to make rules –
- to dispense with furnishing documents, etc. with return; and
 - for filing of return in electronic form.
16. Fill up the blanks, having regard to the provisions of the Central Sales-tax Act -
- The rate of CST applicable in respect of inter-State sale of goods to an unregistered dealer is -----.
 - Mr. A made his first inter-State sale on 4.6.07 and applied for registration on 2.7.07. The effective date of registration would be -----.
 - The rate of CST applicable to goods exempt from State Sales-tax is -----.
 - Highest appellate authority of a State means any ----- or ----- or ----- (except High Court) established or constituted under the general sales tax law of a State.
 - The rate of CST in respect of inter-State sale of goods specified in section 8(3) to a registered dealer is ----- or the State sales-tax rate, whichever is -----.
17. State with reasons, whether the statements are True or False, as per the provisions of Central Sales-tax Act, 1956:
- Inter-State sale of goods to Government attracts concessional CST@3% or the State sales tax rate, whichever is lower.
 - State Governments can impose sales tax/VAT at a rate higher than 4% on tobacco products.
 - Subsequent sale of goods (sold in the course of Inter-State trade or commerce) to the Government or a registered dealer by transfer of documents of title to such goods during the same movement is exempt from CST.
 - Place of business does not include warehouse.
 - CST is leviable on sale of shares by a dealer in shares.
18. Define the following terms under the Central Sales-tax Act, 1956:
- Appropriate State and Place of business
 - Business
 - Works contract.

19. Discuss briefly about appeals under section 20 of the Central Sales-tax Act, 1956.
20. What are the considerations on the basis of which goods of special importance are selected?

SUGGESTED ANSWERS/ HINTS

1. (a) (ii) (b) (iv) (c) (i) (d) (iv) (e) (iv)
2. Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:
 - (i) He has been in India during the previous year for a total period of 182 days or more, or
 - (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Therefore, the residential status of Miss Daisy, an Australian National, for A.Y.2008-09 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2008-09 i.e. P.Y.2007-08 and in the preceding four assessment years.

Her stay in India during the previous year 2007-08 and in the preceding four years are as under:-

P.Y.2007-08

01.04.2007 to 17.09.2007	-	170 days
25.03.2008 to 31.03.2008	-	<u>7 days</u>
Total		<u>177 days</u>

Four preceding previous years

P.Y.2006-07 [1.4.06 to 31.3.07]	-	16 days
P.Y.2005-06 [1.4.05 to 31.3.06]	-	Nil
P.Y.2004-05 [1.4.04 to 31.3.05]	-	Nil
P.Y.2003-04 [1.4.03 to 31.3.04]	-	<u>Nil</u>
Total		<u>16 days</u>

The total stay of Ms. Daisy in India during the previous year 2007-08 was less than 182 days and during the four years preceding this year was for 16 days. Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as non-resident for the A.Y. 2008-09.

Computation of total income of Miss Daisy for the A.Y. 2008-09

Particulars	Rs.	Rs.
Income from house property		
Shop located in Calcutta remained on rent from 01.06.07 to 31.03.08 @ Rs.18,000/- p.m.		
Gross Annual Value [18,000 x 10] (See Note below)	1,80,000	
Less: Municipal taxes	-	
Net Annual Value (NAV)	<u>1,80,000</u>	
Less: Deduction under section 24		
30% of NAV	54,000	
Interest on loan	<u>85,400</u>	
	1,39,400	40,600

Income from other sources

Gifts received from non-relatives on or after 1.4.2006 is chargeable to tax as per section 56(2)(vi) if the aggregate value of such gifts is in excess of Rs.50,000.

- Rs.1,01,000 received from parents of husband would be exempt, since parents of husband fall within the definition of relative and gifts from a relative are not chargeable to tax.	Nil		
- Rs.51,000 received from sister-in-law is exempt, since sister-in-law falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil		
- From three close friends of parents-in-law Rs.21,000 each. Since the aggregate of Rs.63,000 exceeds Rs.50,000, the entire amount is taxable under section 56(2)(vi).		63,000	63,000
Total income			<u>1,03,600</u>

Tax payable by Ms. Daisy would be Nil, since her total income is lower than the basic exemption limit of Rs.1,10,000.

Note – Actual rent received has been taken as the Gross Annual Value in the absence of other information (i.e. Municipal value, fair rental value and standard rent) in the question.

3. Computation of Gross total income of Mr. Alok Sharma for A.Y. 2008-09

S.No.	Particulars	Resident and ordinarily resident Rs.	Resident but not ordinarily resident Rs.	Non- resident Rs.
(1)	Rent from property in Sri Lanka	40,000	-	-
(2)	Interest on debentures in an Indian company received in Sri Lanka	8,000	8,000	8,000
(3)	Fees for technical services rendered in Bombay but received in Sri Lanka	15,000	15,000	15,000
(4)	Pension for services rendered in India but received in Sri Lanka	6,000	6,000	6,000
(5)	Past foreign untaxed income brought to India during the previous year	-	-	-
(6)	Income from agricultural land in Sri Lanka received there and then brought to India	12,000	-	-
(7)	Income from profession in Sri Lanka which was set up in India, received there but spent in India	40,000	40,000	-
(8)	Gifts received on the occasion of his birthday	-	-	-
(9)	Interest on savings bank deposit in Indian Bank	13,000	13,000	13,000
	Gross Total Income	1,34,000	82,000	42,000

Note -

- (1) Rent from property in Sri Lanka accrues outside India and is received outside India. It is taxable only in the case of a resident and ordinarily resident.
 - (2) Since the income accrues in India, it is taxable in all cases.
 - (3) Since the services are rendered in India, it is taxable in all cases.
 - (4) Service was rendered in India. Pension income is deemed to accrue in India. It is Indian income and is chargeable to tax in all cases.
 - (5) It is not income of the previous year 2007-08. It cannot be taxed at the time of remittance to India.
 - (6) It is received outside India and accrued outside India. It is foreign income. Therefore, it is taxable in India only in the case of resident and ordinarily resident taxpayer.
 - (7) Income from profession set up in India, but received outside India is taxable in the case of resident and ordinarily resident and resident but not ordinarily resident
 - (8) If the aggregate amount of gifts received by an individual/HUF from all persons (not being relatives) during a financial year exceeds Rs.50,000, it is taxable as income. In this case, since the value does not exceed Rs.50,000, it is not taxable.
 - (9) Interest income accrues in India and is hence, taxable in all cases.
4. (a) Rs.15,000
 (b) Rs.1,45,000
 (c) 9 months
 (d) Rs.50 lakh
 (e) Rs.1,10,000

5. Computation of total income of Mr. Hari for A.Y.2008-09

Particulars	Rs.
Income from salaries (See Working Note 1)	56,000
Capital gains (See Working Note 2)	3,73,500
Income from other sources (See Working Note 3)	57,000
Gross Total Income	4,86,500
Less: Deductions under Chapter VI-A (See Working Note 4)	45,000
Total Income	4,41,500

Working Notes:

1. Income from salaries

Particulars	Rs.
Salary for 3 months received from Government of India (8,000 x 3)	24,000
Pension for 5 months from July'07 to Nov'07 @ Rs.4,000 p.m. (4,000 x 5)	20,000
Pension for 4 months from Dec'07 to March'08 @ Rs.3,000 p.m.(3,000 x 4)	12,000
	56,000

Note - Commuted value of pension of Rs.1,00,000/- received from the Central Government is fully exempt under section 10(10A).

2. Capital gains

Particulars	Rs.
Long term capital gains on sale of house plot at Chennai on 14.02.2008	
Sale consideration received is Rs.11,00,000. However, since the value assessed by the stamp valuation authority (i.e. Rs.12,00,000) is higher than the sale consideration, such value assessed is deemed to be the full value of the consideration received or accruing as a result of such transfer as per section 50C	12,00,000
Less: Indexed cost of acquisition	8,26,500
$1,50,000 \times \frac{551}{100}$	
	<u>3,73,500</u>

Note – In the case of an asset acquired before 1.4.81, the assessee has the option of taking the fair market value as on 1.4.1981 to be the cost of acquisition for computation of capital gains. In this case, since the fair market value as on 1.4.81 is higher than the cost of acquisition, Mr. Hari has opted for the fair market value, since it would be more beneficial for him.

3. Income from other sources

Particulars	Rs.	Rs.
Interest on bank FDRs		53,000
Dividend of Rs.12,000 on units of Mutual Fund [exempt under section 10(35)]		-
Interest on maturity of NSC	46,000	
Less: Interest already shown on accrual basis in the past returns	42,000	4,000
		<u>57,000</u>

4. Deductions under Chapter VI-A

Particulars	Rs.
Under section 80C	
Investment in purchase of NSC	30,000
Under section 80D	
Medical insurance premium paid by cheque	15,000
	<u>45,000</u>

6. (a) Exemption in respect of disaster compensation

- (i) Section 10(10BC) has been inserted with retrospective effect from A.Y.2005-06 to exempt any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.
- (ii) Such compensation should be granted by the Central Government or a State Government or a local authority.
- (iii) However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

(iv) "Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence. It should have the effect of causing -

- (1) substantial loss of life or human suffering; or
- (2) damage to, and destruction of, property; or
- (3) damage to, or degradation of, environment.

(v) It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

(b) Capital gains in respect of sweat equity shares

"Sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

The Finance Act, 2007 has brought sweat equity shares under the FBT net. FBT would be leviable on the employer to the extent of concession given to the employee/former employee while allotting sweat equity shares.

The value of fringe benefits would be the fair market value of the sweat equity shares on the date on which the option vests with employee as reduced by the amount actually paid by, or recovered from the employee in respect of such shares.

Consequently, it has been provided that for the purpose of computing capital gains in the hands of the employee at the time of sale of such shares by the employee, the cost of acquisition shall be the fair market value which has been taken into account for the purpose of computing the value of fringe benefits in the hands of the employer.

Further, the period of holding, in the case of sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees, including former employees, shall be reckoned from the date of allotment or transfer of such sweat equity shares. Such period of holding will determine whether the asset transferred is a long-term capital asset or short-term capital asset.

7. This statement is correct.

(i) The benefit of deduction under section 80-IA has now been extended to an undertaking which lays and begins to operate a cross country natural gas distribution network, including pipelines and storage facilities being an integral part of such network by inserting clause (vi) in sub-section (4). For claiming benefit under this clause, the undertaking should fulfill the following conditions-

- (1) it is owned by a company registered in India or a consortium of such companies or a board or corporation established or constituted under any Central or State Act;
- (2) it is approved by the Petroleum and Natural Gas Regulatory Board;
- (3) one-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person;
- (4) it starts functioning on or after 1st April, 2007.

Further, the conditions that it should not be formed by splitting up or reconstruction of a business already in existence (except in circumstances provided in section 33B) and it should not be formed by the transfer to a new business of plant and machinery previously used for any purposes would apply to these undertakings also.

(ii) Navigational sea channels have been included within the scope of the term "Infrastructure facility" for the purpose of deduction under section 80-IA(4)(i) available to an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility fulfilling the conditions prescribed therein.

- (iii) Deduction under section 80-IA(4)(v) is available to an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant if such undertaking begins to generate or transmit or distribute power before 31.3.07. The time-limit has now been extended up to 31.3.08.
8. As per section 35ABB, any amount actually paid for obtaining licence to operate telecommunication services, shall be allowed as deduction in equal installments during the number of years for which the licence is in force. Therefore, the year of actual payment is relevant and not the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.
1. Rs.7,40,000 paid on 28.03.2007 [P.Y.2006-07]
 Unexpired period of licence 10 years
 Hence, Rs.74,000 [i.e. Rs.7,40,000/10] can be claimed under section 35ABB for period of 10 years commencing from A.Y.2007-08.
 2. Rs.23,40,000 paid during year ended 31.03.08 [P.Y.2007-08]
 Unexpired period of licence 9 years
 Hence, Rs.2,60,000 [i.e. Rs.23,40,000/9] can be claimed under section 35ABB for a period of 9 years commencing from A.Y.2008-09.
 3. Therefore, the amount of deduction available under section 35ABB for A.Y.2008-09 is Rs.3,34,000 [i.e. Rs.74,000 + Rs.2,60,000].
 4. Where deduction under section 35ABB is claimed and allowed, deduction under section 32(1) cannot be allowed for the same previous year or any subsequent previous year.

9. Computation of tax payable by Mrs. Geetha for the A.Y.2008-09

Particulars	Rs.	Rs.
Step 1		
Add Agricultural income and Non-agricultural income (Rs.52,000 + Rs.7,62,000) [For computation of non-agricultural income, see Note 1 below]		8,14,000
Tax on the above income		
(i) Tax on long-term capital gain of Rs.4,00,000 @ 20%	80,000	
(ii) Tax on winnings of Rs.12,000 from lotteries @ 30%	3,600	
(iii) Tax on balance income of Rs.4,02,000	56,600	
Total tax on Rs.8,14,000		1,40,200
Step 2		
Add Basic exemption limit to agricultural income (Rs.1,95,000 + Rs.52,000)		2,47,000
Tax on Rs.2,47,000		10,400
Step 3		
Tax on non-agricultural income (Tax under step 1 – Tax under step 2) (Rs.1,40,200 – Rs.10,400)		1,29,800
Add: Education cess @ 2%		2,596
Add: Secondary and higher education cess @ 1%		1,298
Tax payable by Mrs.Geetha		1,33,694

Notes -

1. Computation of total income of Mrs. Geetha for the A.Y.2008-09

Particulars	Rs.	Rs.
Business income		3,50,000
Long term capital gains on sale of house		4,00,000
Short term capital gains on sale of shares in ABC Pvt. Ltd		50,000
Prize winnings from lotteries		12,000
Gross Total Income		8,12,000
Less: Deduction under section 80C		
Life insurance premium of self	30,000	
Life insurance premium of husband	20,000	50,000
Total Income		7,62,000

2. Short-term capital gains on sale of shares in ABC Pvt. Ltd. is taxable at normal rates.
10. (i) Section 80-IE has been inserted by the Finance Act, 2007 to provide an incentive to an undertaking which has during the period between 1st April, 2007 and 1st April, 2017, begun or begins, in any of the North-Eastern States (i.e., the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) –
- (1) to manufacture or produce any eligible article or thing;
 - (2) to undertake substantial expansion to manufacture or produce any eligible article or thing;
 - (3) to carry on any eligible business.
- (ii) Eligible article or thing means the article or thing other than the following -
- (a) goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 which pertains to tobacco and manufactured tobacco substitutes;
 - (b) pan masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985;
 - (c) plastic carry bags of less than 20 microns; and
 - (d) goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 produced by petroleum oil or gas refineries.
- (iii) Substantial expansion means increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.
- (iv) Eligible business means the business of -
- (a) hotel (not below two star category);
 - (b) adventure and leisure sports including ropeways;
 - (c) providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds;
 - (d) running an old-age home;
 - (e) operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training;
 - (f) running information technology related training centre;

- (g) manufacturing of information technology hardware; and
 - (h) Bio-technology.
- (v) Where the gross total income of an assessee includes any profits and gains derived by such an undertaking, a deduction of 100% of the profits and gains derived from such business for 10 consecutive assessment years commencing with the initial assessment year shall be allowed in computing the total income of the assessee. Initial assessment year means the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things, or completes substantial expansion.
- (vi) However, the following conditions have to be fulfilled by the undertaking for claiming benefit of deduction under this section -
- (1) It should not be formed by splitting up, or the reconstruction, of a business already in existence (except in circumstances provided in section 33B)
 - (2) It should not be formed by the transfer to a new business of machinery or plant previously used for any purpose exceeding 20% of the total value of machinery and plant used in the business.
- (vii) The profits and gains from the eligible business should be computed as if such eligible business were the only source of income of the assessee during the relevant assessment year.
- (viii) The deduction under this section should not exceed the profits of such eligible business of the undertaking.
- (ix) The deduction shall be allowed only if the accounts are audited by a Chartered Accountant, who is also required to certify that the deduction has been correctly claimed. Further, the audit report should be furnished along with the return of income.
11. (a) False - For A.Y.2008-09, surcharge is attracted in the case of domestic companies only if its total income exceeds Rs.1 crore.
- (b) False – As per section 80AC, furnishing return of income on or before the due date is mandatory only for claiming exemption under sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID and 80-IE.
- (c) False - Section 80-ID provides a deduction of 100% of profits and gains derived by an undertaking from the business of hotel in the Northern Capital Region for a period of 5 consecutive assessment years.
- (d) False – The higher basic exemption limit of Rs.1,95,000 is available only to resident individuals of the age of 65 years or more during the relevant previous year. Non-residents are not eligible for this higher basic exemption limit.
- (e) False - An Explanation has been inserted to section 9 to provide that income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.
12. (i) Section 44DB provides the manner in which the deduction, inter alia, under section 32 is to be allowed in a case where business reorganisation of a co-operative bank has taken place during the financial year.
- (ii) Business reorganisation means the reorganisation of business involving the amalgamation or demerger of a co-operative bank.
- (iii) The amount of deduction allowable to the amalgamating co-operative bank (i.e. Delta Co-operative bank, in this case) under section 32 has to be determined in accordance with the following formula -

$$A \times \frac{B}{C}$$

A = the amount of deduction allowable to the predecessor co-operative bank (i.e. Delta Co-operative bank, in this case) if the business reorganisation had not taken place. In this case, the amount of deduction is Rs.1,20,000.

B = the number of days comprised in the period beginning with the 1st day of the financial year (i.e. 1.4.2007, in this case) and ending on the day immediately preceding the date of business reorganization (i.e. 30.11.2007, in this case); and

C = the total number of days in the financial year in which the business reorganisation has taken place (i.e. 366 days).

- (iv) The amount of deduction allowable to the amalgamated co-operative bank (i.e. Gamma Co-operative bank, in this case) under section 32 has to be determined in accordance with the formula -

$$A \times \frac{B}{C}$$

A = the amount of deduction allowable to the predecessor co-operative bank (i.e. Delta Co-operative bank, in this case) if the business reorganisation had not taken place. In this case, the amount of deduction is Rs.1,20,000.

B = the number of days comprised in the period beginning with the date of business reorganisation (i.e. 1.12.2007, in this case) and ending on the last day of the financial year (i.e. 31.3.2008); and

C = the total number of days in the financial year in which the business reorganisation has taken place (i.e. 366 days).

- (v) In this case, the deduction that would have been allowable under section 32 to Delta co-operative bank, had the amalgamation not taken place, is Rs.1,20,000. The amalgamation took place on 1.12.07. Therefore, the deduction allowable to Delta co-operative bank under section 32 would be Rs.80,000 i.e. Rs.1,20,000 x 244/366. The deduction allowable to Gamma co-operative bank would be Rs.40,000 i.e. Rs.1,20,000 x 122/366.

- (vi) It must be noted that for the purpose of availing benefit under this section, the amalgamation should fulfill the following conditions –

- (1) all the assets and liabilities of Delta co-operative bank immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to Gamma co-operative bank) should become the assets and liabilities of Gamma co-operative bank;
- (2) the members holding 75% or more voting rights in Delta co-operative bank should become members of Gamma co-operative bank; and
- (3) the shareholders holding 75% or more in value of the shares in Delta co-operative bank (other than the shares held by Gamma co-operative bank or its nominee or its subsidiary, immediately before the merger) should become shareholders of Gamma co-operative bank.

13. The Supreme Court, in *Rajesh Kumar & Ors. v. DCIT* (2006) 287 ITR 91, observed that the order under section 142(2A) is a quasi judicial order. Therefore, the principles of natural justice have to be applied and the assessee has to be given an opportunity of being heard before directing the special audit. The principles of natural justice are based on two principles, namely, (i) nobody shall be condemned unheard; (ii) nobody shall be a judge of his own cause. Once it is held that the assessee suffers civil consequences and any order passed would be prejudicial to him, the principles of natural justice must be held to be implicit.

Accordingly, to give effect to the observation of the Supreme Court, the Finance Act, 2007 has now provided that the Assessing Officer is required to give the assessee a reasonable opportunity of being heard before issuing directions for special audit under section 142(2A).

14. (i) New section 80-ID has been inserted to provide a deduction of 100% of profits and gains derived by an undertaking from the eligible business i.e. business of hotel or business of building, owning and operating a convention centre in a specified area, for a period of 5 consecutive assessment years beginning from the year in which such hotel starts functioning or convention centre starts operating on a commercial basis.
- (ii) However, such hotel or convention centre should be constructed at any time during the period from 1.4.2007 to 31.3.2010.
- (iii) Specified area means the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad. This is to boost the construction activity in NCR in view of the upcoming Common Wealth Games in 2010.
- (iv) "Convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed.
- (v) "Hotel" means a hotel of two-star, three-star or four-star category as classified by the Central Government;
- (vi) Such business should not be formed by the splitting up, or the reconstruction, of a business already in existence. It should not be formed by the transfer to a new business of a building previously used as a hotel or convention center. Further, it should not be formed by the transfer to a new business of machinery or plant previously used for any purpose exceeding 20% of the total value of machinery and plant used in the business.
- (vii) For this purpose, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose if the following conditions are fulfilled:
 - (a) such machinery or plant was not at any time used in India;
 - (b) such machinery or plant is imported into India from any country outside India; and
 - (c) no deduction on account of depreciation has been allowed in respect of such machinery or plant to any person earlier.
- (viii) The profits and gains from the eligible business should be computed as if such eligible business were the only source of income of the assessee during the relevant assessment year.
- (ix) The deduction under this section should not exceed the profits of such eligible business of the undertaking.
- (x) The deduction shall be allowed only if the accounts are audited by a Chartered Accountant, who is also required to certify that the deduction has been correctly claimed. Further, the audit report should be furnished along with the return of income.

15. The Finance Act, 2007 has introduced new sections 139C and 139D, wherein wide ranging powers, including the power to frame rules to dispense with furnishing documents etc. with the return, have been given to the CBDT for implementing the scheme of filing Electronic Returns.

Section 139C provides that the CBDT may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, reports of audit or any other documents, which are otherwise required to be furnished along with the return under any other provision of the Act. However, on demand, the said documents, statements, receipts, certificate, reports of audit or any other documents have to be produced before the Assessing Officer.

Section 139D empowers the CBDT to make rules providing for –

- (a) the class or classes of persons who shall be required to furnish the return of income in electronic form;
- (b) the form and the manner in which the return of income in electronic form may be furnished;

- (c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand;
 - (d) the computer resource or the electronic record to which the return of income in electronic form may be transmitted.
16. (i) The State sales-tax rate
- (ii) 4.6.2007
 - (iii) Nil
 - (iv) authority, tribunal, court
 - (v) 3%, lower
17. (i) False – With effect from 1.4.2007, the concessional rate of 3% or the State sales-tax, whichever is lower, would not be available in respect of inter-State sale to Government.
- (ii) True - Section 14 declares certain goods to be “goods of special importance”. In respect of such goods, the State sales-tax rate cannot exceed 4%. The Taxation Laws (Amendment) Act, 2007 has omitted clause (ix) of section 14, which was in respect of tobacco products. Consequently, the State Governments can impose higher rates of sales tax/VAT on tobacco products.
- (iii) False - Section 6(2) has been substituted w.e.f. 1.4.2007 by the Taxation Laws (Amendment) Act, 2007 to deny this benefit to the Government. Therefore, subsequent sale to Government will no longer be exempt from CST.
- (iv) False – As per section 2(dd), “place of business” includes a warehouse.
- (v) False – “Shares” have been specifically excluded from the definition of “goods” as per section 2(d). Therefore, CST is not leviable on sale of shares by a dealer in shares.
18. (a) Appropriate State [Section 2(a)] – ‘Appropriate State’ means, in relation to a dealer who has one or more places of the business situated in the same State, that State. If the dealer has places of business situated in different States, then, Appropriate State in relation to the dealer would mean every such State with respect to the place or places of business situated within its territory.
- Place of business [Section 2(dd)] – Place of business includes -
- (i) in any case, where a dealer carries on business through an agent, the place of business of such agent;
 - (ii) a warehouse, godown or other place where a dealer stores his goods; and
 - (iii) a place where a dealer keeps his books of account.
- (b) Business [Section 2(aa)] – The term ‘business’ includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, or concern. It also includes any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.
- (c) Works Contract [Section 2(ja)] – means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.
19. Sub-section (1) of section 20 provides that the provisions of Chapter VI (Authority to settle disputes in course of inter-State trade or commerce) shall apply to appeals filed by any aggrieved person against any order of the highest appellate authority of a State, made under section 6A read with section 9. For the purposes of this section and sections 21, 22 and 25, “highest

appellate authority of a State" means any authority or tribunal or court (except the High Court) established or constituted under the general sales tax law of a State, by whatever name called.

Sub-section (2) provides that the Authority shall adjudicate an appeal filed under sub-section (1). This provision has overriding effect over any provision contained in the general sales tax law of a State.

Sub-section (3) provides that an appeal under sub-section (1) may be filed within 90 days from the date on which such order of the highest appellate authority of a State is served on any aggrieved person. However, the Authority may entertain any appeal after the expiry of the said period of ninety days, but not later than one hundred and fifty days from the date of such service, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Further, the Authority may entertain any appeal from an aggrieved person within sixty days from the commencement of the Central Sales Tax (Amendment) Act, 2005, where such aggrieved person had the right to file an appeal against the order of the highest appellate authority of the State under sub-section (1) as it stood immediately before the commencement of the said Act, but has not availed of the right to file the appeal during the period commencing on and from 3rd December 2001 and ending with 16th March, 2005. The application should be made in quadruplicate and be accompanied by a fee of Rs.5,000.

20. Goods of special importance covered by section 14 are selected based on the following considerations, -
 - (1) It should be raw material or largely in the nature of raw material;
 - (2) Such raw material or finished goods made based on such raw material should, in terms of volume of inter-State transaction, be of special importance in inter-State trade or commerce; and
 - (3) Such goods should be of special importance for the country as a whole, from the stand point of the consumer or of industry.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.07 and 31.10.07

I CIRCULARS

1. Circular No.4/2007 dated 15.6.2007 - Distinction between shares held as stock-in-trade and shares held as investment - Tests for such a distinction

The Income-tax Act, 1961 makes a distinction between a capital asset and a trading asset. Capital asset is defined in section 2(14). Long-term capital assets and gains are dealt with under section 2(29A) and section 2(29B). Short-term capital assets and gains are dealt with under section 2(42A) and section 2(42B). Trading asset is dealt with under section 28.

The Central Board of Direct Taxes (CBDT) had, through Instruction No.1827 dated August 31, 1989, brought to the notice of the Assessing Officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade (trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, the same have been further updated for the information of assesseees as well as for guidance of the Assessing Officers.

- (1) The Supreme Court, in, CIT (Central), Calcutta vs Associated Industrial Development Company (P) Ltd 82 ITR 586, observed that:

"Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment."

- (2) In the case of CIT, Bombay vs H. Holck Larsen 160 ITR 67, the Supreme Court observed that:

“The High Court, in our opinion, made a mistake in observing whether transactions of sale and purchase of shares were trading transactions or whether these were in the nature of investment was a question of law. This was a mixed question of law and fact.”

- (3) The Authority for Advance Rulings (AAR) 288 ITR 641, referring to the decisions of the Supreme Court in several cases, has culled out the following principles :-
- (i) where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;
 - (ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;
 - (iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt.

It is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

The above principles would help in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). It is to be noted that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

2. Circular No. 6/2007, dated 11-10-2007 - Allowability of harvesting and transportation expenses in the case of Co-operative sugar mills

This Circular is to clarify the issue of allowability of the claim of harvesting and transportation expenses incurred by the Co-operative sugar mills for procuring sugarcane from farmers, who are members of such Co-operative Sugar Mills and who are bound under an agreement to supply the sugarcane exclusively to the concerned sugar Mill.

The issue of allowability of such expenses in the case of Co-operative Sugar Mills has been examined by the CBDT. These expenses are incurred by the Sugar Mills for ensuring an adequate and sustained supply of freshly cut sugarcane that is an essential input for the continuous running of such Mills. These expenses are, therefore, incurred for commercial expediency and are prima facie wholly and exclusively for the purpose of business. Such expenses are, therefore, allowable in the computation of the income of the Co-operative Sugar Mills.

II NOTIFICATIONS

1. Notification No. 208/2007, dated 27-6-2007

Rule 6DD of the Income-tax Rules has been substituted. This Rule now provides for cases and circumstances in which payment in a sum exceeding twenty thousand rupees may be made otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

As per this rule, no disallowance under clause (a) of sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under clause (b) of sub-section (3) of section 40A where any payment in a sum exceeding twenty thousand rupees is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft in the cases and circumstances specified hereunder, namely:

- (a) where the payment is made to
 - (i) the Reserve Bank of India or any banking company;
 - (ii) the State Bank of India or any subsidiary bank;
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society;
 - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by
 - (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
 - (v) the use of electronic clearing system through a bank account;
 - (vi) a credit card;
 - (vii) a debit card.
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of -
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture,
 to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

- (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

2. Notification No. 213/2007, dated 3-8-2007

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has, vide Notification No. 213/2007 dated 3.8.2007, specified the 15 year zero coupon bonds of Power Finance Corporation (PFC), to be issued on or before 31.3.2009, as zero coupon bonds for the purposes of section 2(48).

3. Notification No. 214/2007, dated 3-8-2007

The Central Government has, vide notification no.214/2007 dated 3.8.2007 specified the cost inflation index for the financial year 2007-08. The CII for F.Y. 2007-08 is 551.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551

4. Notification No. 262/2007, dated 16-10-2007

Rule 117C has been inserted in the Income-tax Rules, 1962 to empower the Tax Recovery Officer to exercise or perform certain powers and functions of an Assessing Officer.

The Chief Commissioner or the Commissioner, by general or special order in writing, may authorise a Tax Recovery Officer to exercise or perform the powers and functions conferred on or assigned to an Assessing Officer under section 154 for rectifying any mistake apparent from record in respect of an order passed by the Assessing Officer consequent to which a sum is payable and the Tax Recovery Officer has drawn a Certificate under section 222 in respect of such sum. The Tax Recovery Officer shall exercise or perform such powers and functions concurrently with the Assessing Officer.

RECENT AMENDMENTS IN INCOME TAX AND CENTRAL SALES TAX

Students are advised to study thoroughly the Supplementary Study Paper-2006 and Supplementary Study Paper-2007 on Income-tax and Central Sales-tax for the PE-II Course. The Supplementary Study Paper-2006 contains the amendments made by the Finance Act, 2006 as well as the important notifications/circulars/other legislative amendments between 1.5.05 and 30.4.06. The Supplementary Study Paper-2007 contains the amendments made by the Finance Act, 2007 as well as the important notifications/circulars/other legislative amendments between 1.5.06 and 30.4.07. These Supplementary Study Papers are available at the branches and regional sales counters of the Institute. This RTP contains the significant amendments made between 1.5.07 and 31.10.07 through notifications and circulars. It is very important to have good knowledge of the latest amendments since considerable weightage is being given to the latest amendments in the examinations.