

The Suggested Answers for Paper – 5: Income-tax and Central Sales Tax are based on the provisions applicable for A.Y.2007-08, which is the assessment year relevant for November 2007 examination.

PAPER – 5 : INCOME TAX AND CENTRAL SALES TAX

Answer all questions

Question 1

- (a) Rosy and Mary are sisters, born and brought up at Mumbai. Rosy got married in 1969 and settled at Canada since 1969. Mary got married and settled at Mumbai. Both of them are below 60 years. The following are the details of their income for the previous year ended 31.3.2007:

S.No.	Particulars	Rosy Rs.	Mary Rs.
1.	Pension received from State Government	-	10,000
2.	Pension received from Canadian Government	20,000	--
3.	Long-term capital gain on sale of land at Mumbai	1,00,000	50,000
4.	Short-term capital gain on sale of shares of Indian listed companies in respect of which STT was paid	20,000	2,00,000
5.	LIC premium paid	--	10,000
6.	Premium paid to Canadian Life Insurance Corporation at Canada	10,000	--
7.	Mediclaim policy premium paid	--	5,000
8.	Tax saving bond purchased in March, 2007	30,000	20,000
9.	Rent received in respect of house property at Mumbai	60,000	30,000

Compute the taxable income of Mrs. Rosy and Mrs. Mary for the Assessment Year 2007-08 and tax thereon. (15 Marks)

- (b) (i) Mr. Khanna, an employee of IOL, New Delhi, a private sector company, received the following for the financial year 2006-07 :

	Rs.
1. Basic pay	1,20,000
2. House rent allowance	90,000
3. Special allowance	30,000

Mr. Khanna was residing at New Delhi and was paying a rent of Rs.10,000 a month. Compute the eligible exemption under section 10(13A) of the Income-tax Act, 1961, in respect of house rent allowance received.

- (ii) If Mr. Khanna opts for rent free accommodation whereby IOL would be paying a rent of Rs.10,000 per month to the landlord and recovers a sum of Rs.2,500 per month from Mr. Khanna which was in excess of his entitlement, what will be the perquisite value in respect of such rent free accommodation?
- (iii) Which of the above would be beneficial to Mr. Khanna i.e, house rent allowance or rent free accommodation? (8 Marks)
- (c) Mr. Nigamanth, an employee, furnishes the following particulars for the previous year ending 31.03.2007:

	Rs.
(a) Salary income as computed (after all deductions) for the year	6,60,000
(b) Arrears of salary received during the year (not included in the above) relating to Financial Year 2004-2005	25,000
(c) Assessed income of Financial Year 2004-2005	1,20,000

You are requested to compute relief under section 89 of the Income-tax Act, 1961, in terms of tax payable.

The rates of income-tax for the Assessment Year 2005-06 are:

	Tax Rate (%)
On first Rs.50,000	--
On 50,000-60,000	10%
On 60,000-1,50,000	20%
Above 1,50,000	30%
Education cess	2% (of tax payable)

(7 Marks)

Answer

- (a) Computation of taxable income of Mrs. Rosy and Mrs. Mary for the A.Y.2007-08

S. No.	Particulars	Mrs. Rosy Non-resident Rs.	Mrs. Mary Resident Rs.
(I)	Salaries		
	Pension received from State Government		10,000
	Pension received from Canadian Government is not taxable in the case of a non-resident since it is earned and received outside India	-	
		-	10,000

(II)	Income from house property		
	Rent received from house property at Mumbai (assumed to be the annual value in the absence of other information i.e. municipal value, fair rent and standard rent)	60,000	30,000
	Less: Deduction under section 24(a) @ 30%	18,000	9,000
		<u>42,000</u>	<u>21,000</u>
(III)	Capital gains		
	Long-term capital gain on sale of land at Mumbai	1,00,000	50,000
	Short term capital gain on sale of shares of Indian listed companies in respect of which STT was paid	20,000	2,00,000
		<u>1,20,000</u>	<u>2,50,000</u>
(A)	Gross Total Income [(I)+(II)+(III)]	1,62,000	2,81,000
	Less: Deductions under Chapter VIA		
1.	Deduction under section 80C		
1.	LIC Premium paid	-	10,000
2.	Premium paid to Canadian Life Insurance Corporation	10,000	
3.	Tax Saving Bond (assuming that they are notified infrastructure bonds eligible for deduction under section 80C)	30,000	20,000
		<u>40,000</u>	<u>30,000</u>
2.	Deduction under section 80D – Mediclaim premium paid (assuming that the same is paid by cheque)	-	5,000
		<u>40,000</u>	<u>35,000</u>
(B)	Total deduction under Chapter VIA is restricted to income other than capital gains taxable under sections 111A & 112	40,000	31,000
(C)	Total Income (A-B)	<u>1,22,000</u>	<u>2,50,000</u>

Computation of tax liability of Mrs. Rosy for A.Y.2007-08

On Rs.2,000 (i.e. 42,000 – 40,000) at regular rates -

On Rs.1,00,000 long-term capital gain @ 20% 20,000

[See Note 1 below]

On Rs.20,000 short-term capital gain@ 10%	
[See Note 2 below]	2,000
Tax payable	22,000
Education cess @ 2%	440
Total tax payable (including education cess)	22,440

Computation of tax liability of Mrs. Mary for
A.Y.2007-08

Tax on long-term capital gains [See Notes 3 and 4 below]	Nil
Tax on short-term capital gains @ 10% of Rs.1,15,000 [i.e. Rs.2,00,000 less Rs.85,000, being the unexhausted basic exemption limit as per proviso to section 111A]	11,500
Tax payable	11,500
Education cess @ 2%	230
Total tax payable (including education cess)	11,730

Notes –

- (1) Long-term capital gains is chargeable to tax @20% as per section 112.
- (2) Short-term capital gains on transfer of equity shares in respect of which securities transaction tax is paid is subject to tax @ 10% as per section 111A.
- (3) In case of resident individuals, if the basic exemption limit is not fully exhausted against other income, then the long-term capital gains/short-term capital gains will be reduced by the unexhausted basic exemption limit and only the balance will be taxed at 20%/10% respectively.
- (4) Since long-term capital gains is taxable at the rate of 20% and short-term capital gains is taxable at the rate of 10%, it is more beneficial for Mrs.Mary to first exhaust her basic exemption limit of Rs.1,35,000 against long-term capital gains of Rs.50,000 and the balance limit of Rs.85,000 (i.e., 1,35,000 – 50,000) against short-term capital gains.

However, it is not possible for Mrs. Rosy to adjust her unexhausted basic exemption limit against capital gains, since such adjustment is possible only in the case of residents. Further, the basic exemption limit available to her is only Rs.1,00,000 and not Rs.1,35,000.

- (b) (i) The eligible exemption under section 10(13A) in respect of house rent allowance received would be least of the following:

	Rs.	Rs.
(a) Actual house rent allowance (HRA) received		90,000
(b) Excess of rent paid over 10% of basic salary		
Rent paid (10,000 x 12)	1,20,000	
Less: 10% of basic pay (i.e. 10% of Rs.1,20,000)	<u>12,000</u>	1,08,000
(c) 50% of salary (i.e. 50% of Rs.1,20,000)		60,000

Least of the above is Rs.60,000.

The house rent allowance received by Mr. Khanna would be exempt to the extent of Rs.60,000 under section 10(13A). The balance of Rs.30,000 is includible in his total income.

- (ii) Perquisite value in respect of concessional accommodation

As per rule 3(1), where the accommodation is taken on lease or rent by the employer, the actual amount of lease rental paid or payable by the employer or 20% of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee is the value of the perquisite.

(a) Actual rent paid by the employer = 10,000 x 12 =	1,20,000
(b) 20% of salary = 20% of basic pay plus special allowance	
= 20% of Rs.1,50,000 =	30,000

Lower of the above is Rs.30,000, which should be reduced by the rent of Rs.30,000 paid by the employee (i.e. 2,500 x 12 = 30,000). The perquisite value is, therefore, nil.

- (iii) We have to see the cash flow from both the options to find out which is more beneficial.

Option 1: HRA	Rs.	Rs.
Cash inflows [Basic Pay + HRA + Special Allowance]		2,40,000
Less: Cash outflows:		
Rent paid	1,20,000	
Tax (See Working Note 1 below)	<u>11,220</u>	<u>1,31,220</u>
Net cash flow		<u>1,08,780</u>

Option 2: Concessional accommodation

Cash inflows [Basic Pay + Special Allowance]	1,50,000
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Less: Cash outflows:

Rent recovery	30,000	
Tax (See Working Note 2 below)	<u>5,100</u>	<u>35,100</u>
Net cash flow		<u>1,14,900</u>

Since the net cash flow is higher in Option 2, Mr. Khanna should opt for concessional accommodation, which would be more beneficial to him.

Working Notes –

1. Computation of tax under Option 1 (HRA): Rs.

Salary:

Basic Pay	1,20,000
HRA (taxable)	30,000
Special allowance	<u>30,000</u>
Total salary	<u>1,80,000</u>

Tax on Rs.1,80,000 11,000

Add: Education cess@2% 220

Tax payable (including education cess) 11,220

2. Computation of tax under Option 2 (Concessional accommodation): Rs.

Salary:

Basic Pay	1,20,000
Special allowance	30,000
Concessional accommodation	<u>Nil</u>
Total salary	<u>1,50,000</u>

Tax on Rs.1,50,000 5,000

Add: Education cess@2% 100

Tax payable (including education cess) 5,100

(c) Computation of relief under section 89

Particulars	Rs.
Computation of tax payable for A.Y. 2007-08	
Salary as computed excluding the arrears	6,60,000
Arrears relating to financial year 2004-05	<u>25,000</u>
Total Income (including arrears)	<u>6,85,000</u>
Tax thereon	1,55,500
Add: Education cess@2%	<u>3,110</u>
Tax payable including education cess (I)	<u>1,58,610</u>
 Total income (excluding arrears)	 6,60,000
Tax thereon	1,48,000
Add: Education cess@2%	<u>2,960</u>
Tax payable including education cess (II)	<u>1,50,960</u>
 Difference between the two [(I) – (II)] = [1,58,610 – 1,50,960] (A)	 7,650
 Computation of tax payable for A.Y. 2005-06	
Total Income (including arrears)	1,45,000
Tax thereon	18,000
Add: Education cess@2%	<u>360</u>
Tax payable including education cess (III)	<u>18,360</u>
 Total Income (excluding arrears)	 1,20,000
Tax thereon	13,000
Add: Education cess@2%	<u>260</u>
Tax payable including education cess (IV)	<u>13,260</u>
 Difference between the two [(III) – (IV)] = [18,360-13,260] (B)	 5,100
 Relief under section 89 = (A – B) = (Rs.7,650 – Rs.5,100)	 2,550

Question 2 (First Alternative)

- (a) Explain the provisions of the Income-tax Act, 1961, with regard to clubbing of income of spouse under section 64.

- (b) Elaborate the procedure for revision by the Commissioner of income-tax of orders erroneous and prejudicial to revenue under section 263 of the Income-tax Act, 1961.

(2 x 6 = 12 Marks)

Answer

- (a) As per section 64(1)(ii), any income arising directly or indirectly to the spouse of an individual by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which such individual has a substantial interest, would be clubbed. However, such rule does not apply where the spouse possesses technical or professional qualification and the income of the spouse is solely attributable to the application of his or her technical or professional knowledge and experience.

Where both husband and wife have substantial interest in a concern and both are in receipt of salary etc. from the said concern, such income will be clubbed with the income of the spouse whose total income, excluding such income, is greater.

An individual shall be deemed to have substantial interest in a concern under the following circumstances -

- (a) If the concern is a company, equity shares carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives.
- (b) In any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than 20% of the profits of such concern.

As per section 64(1)(iv), where there is a transfer of an asset other than house property, directly or indirectly from one spouse to another, otherwise than for adequate consideration or in connection with an agreement to live apart, any income that arises either directly or indirectly to the transferee from the transfer of the asset shall be included in the total income of the transferor.

However, any income on the accretion of transferred asset is not liable to be clubbed. It may be noted that natural love and affection will not constitute adequate consideration for the purpose of section 64(1).

- (b) (i) The Commissioner may call for and examine the record of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as may be necessary, pass a suitable order.
- (ii) He can enhance, modify or cancel an assessment. He can also direct that a fresh assessment should be made.
- (iii) The term 'record' shall include and shall be deemed always to have included all records relating to any proceedings under the Act available at the time of examination by the Commissioner.

- (iv) Where any order referred to in section 263(1) passed by the Assessing Officer had been the subject-matter of any appeal, the powers of the Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.
- (v) No order shall be made after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed.
- (vi) In computing the period of 2 years, the time taken in giving an opportunity to the assessee to be reheard under section 129 and any period during which the revision proceeding is stayed by an order or injunction of any court shall be excluded.
- (vii) The time limit, however, does not apply in a case where the Commissioner has to give effect to a finding or direction contained in the order of the Appellate Tribunal, High Court or the Supreme Court.

Question 2 (Second Alternative)

- (a) Explain the provisions of carry forward and set off of business losses under section 72 of the Income-tax Act, 1961.
- (b) Write briefly about the provisions regarding deductions from gross total income in respect of medical treatment of dependent disabled under section 80DD of the Income-tax Act, 1961 and in respect of medical treatment of assessee himself/dependent under section 80DDB of the Income-tax Act, 1961. (2 x 6 = 12 Marks)

Answer

- (a) (i) Section 72 applies where the net result of the computation under the head "Profits and gains of business and profession" for any assessment year is a loss to the assessee and such loss cannot be wholly set off against income under any head of income in accordance with the provisions of section 71. Such unabsorbed business loss can be carried forward to the subsequent previous year for set off against the business income of that year and so on.
- (ii) However, such loss should not be in the nature of speculation business loss
- (iii) Business loss carried forward can be set off only against the income under the head "Profits and gains of business or profession", though not necessarily against the income from same business in which the loss was incurred.
- (iv) Business loss can be carried forward and set off even if the business in respect of which it was incurred and computed has been discontinued.
- (v) Business loss cannot be carried forward for more than 8 assessment years immediately succeeding the assessment year for which the loss was first computed.
- (vi) Under section 72(2), business loss carried forward should be adjusted first and thereafter unabsorbed depreciation, unabsorbed scientific research expenditure etc. should be adjusted.

(b) Deduction under section 80DD

- (i) Deduction is allowable to a resident individual or HUF in respect of maintenance including medical treatment of a dependent disabled.
- (ii) The amount paid or deposited with LIC or any other insurer is also eligible for deduction.
- (iii) Quantum of deduction is Rs.50,000 and in case severe disability (with 80% or more disability) deduction shall be Rs.75,000.
- (iv) The assessee has to produce a certificate issued by the medical authority under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 along with the return of income under section 139.
- (v) Where the condition of disability requires reassessment, a fresh certificate has to be produced after the expiry of the period mentioned in the original certificate in order to continue to claim deduction.
- (vi) Dependent includes in the case of an individual, spouse, children, parents, brothers and sisters and in the case of a HUF, a member thereof, dependent wholly or mainly on such individual or HUF for his support and maintenance and who has not claimed deduction under section 80U in computation of his total income.

Deduction under section 80DDB

- (i) Deduction is allowable to an assessee, who is resident in India, being an individual or HUF, in respect of amount actually paid for medical treatment of specified diseases or ailments for the individual himself or his dependent or in the case of HUF, for any member thereof.
- (ii) Deduction is the amount actually paid or Rs.40,000, whichever is lower. In case the amount is paid in respect of a senior citizen, a deduction of the amount actually paid or Rs.60,000, whichever is lower, is allowable.
- (iii) Medical certificate in the prescribed form is to be furnished along with the return of income from a specialist doctor, as may be prescribed, working in a Government hospital.
- (iv) If any amount is received under a insurance policy or reimbursed by the employer, the deduction under this section will be reduced by such amount.
- (v) Dependent includes, in the case of an individual, spouse, children, parents, brothers and sisters of the individual and in the case of a HUF, a member thereof, dependent wholly or mainly on such individual or HUF for his support and maintenance.

Question 3

(a) Fill in the blanks with reference to the provisions of Income-tax Act, 1961 :

- (i) Business loss is(eligible/not eligible) for set off against income from salaries.

- (ii) The time limit for revision of order under section 154 isyears from the end of the financial year in which the order was passed.
 - (iii) In the case of a person being a partner of a firm which is separately assessed as such, his share of total income of the firm is(exempt/not exempt).
 - (iv) Time limit for issue of notice under section 143(2) is months from the end of the month in which the return was filed by the assessee.
 - (v) Accounting standard notified under section 145 is applicable for those following system of accounting. (5 x 1 = 5 Marks)
- (b) State whether True/False with proper reasons of the following statements with regard to provisions of Income-tax Act, 1961:
- (i) Mr.Dey, a non-resident, residing in US since 1960, came back to India on 1.4.2005 for permanent settlement. What will be his residential status for assessment years 2007-08 and 2008-09?
 - (ii) Arrears of rent received shall be charged to income-tax as income of the previous year in which rent was received irrespective of whether the assessee is the owner of the property in that year or not.
 - (iii) The deduction on account of depreciation shall be made compulsorily, whether or not the assessee claimed the deduction or not.
 - (iv) Mr. Roy received a sum of Rs.20 lakh on 31.3.07 from Life Insurance Corporation of India in respect of a policy, where the sum assured was Rs.15 lakh, taken on 1.10.2003 and for which a one time premium of Rs.10 lakh was paid. Mr.Roy claims that the amount is totally exempt under section 10(10D)(c) of the Income-tax Act, 1961.
 - (v) "A" receives Rs.2 lakh from his friends on the occasion of his marriage on 22.2.07 and Rs.1 lakh from the brother of his father-in-law on 31.3.07. A's income includible under "other sources" for the previous year 2006-07 would be Rs.3 lakh. (5 x 2 = 10 Marks)

Answer

- (a) (i) not eligible
- (ii) four
- (iii) exempt
- (iv) twelve
- (v) mercantile
- (b) (i) Mr. Dey is a resident in A.Y.2007-08 and A.Y.2008-09 since he has stayed in India for a period of 365 days during the P.Y.2006-07 and P.Y.2007-08, respectively.
As per section 6(6), a person will be "Not ordinarily Resident" in India in any previous year, if such person -

- (a) has been a non-resident in nine out of ten preceding previous years; or
- (b) has, during the seven preceding previous years, been in India for 729 days or less.

If he does not satisfy either of these conditions, he would be a resident and ordinarily resident.

In the instant case, applying the above, the status of Mr. Dey for the previous years 2006-07 and 2007-08 will be "Resident but not ordinarily resident" and "Resident and ordinarily resident", respectively.

Therefore his status for

A.Y. 2007-08 – "Resident but not ordinarily resident"

A.Y. 2008-09 – "Resident and ordinarily resident"

- (ii) True - As per section 25B, the arrears of rent will be charged to tax in the year in which it was received, whether or not the assessee is the owner of the property at that time.
- (iii) True - Explanation 5 to section 32(1) provides that depreciation has to be mandatorily allowed, whether or not the assessee has claimed the same in computing his total income.
- (iv) False - As per section 10(10D)(c), any sum received under an insurance policy issued on or after 1.4.03, in respect of which the premium payable for any year during the term of the policy exceeds 20% of actual capital sum assured, shall not be exempt. Hence, the contention of Mr. Roy is not correct since the one-time premium of Rs.10 lakh paid by him is in excess of 20% of the sum assured [i.e. it exceeds Rs.3 lakh, being 20% of Rs.15 lakh].
- (v) False - A new clause (vi) has been inserted in section 56(2) w.e.f. A.Y. 2007-08 to provide that where any sum of money is received without consideration on or after 1.4.2006 by an individual or a Hindu undivided family from any person or persons and the aggregate value of all such sums received during the previous year exceeds Rs.50,000/-, the whole of the aggregate value of such sum shall be included in the total income of such individual or Hindu undivided family under the head "Income from other sources".

However, in order to avoid hardship in genuine cases, certain sums of money received have been exempted, which includes, inter-alia, any sum received on the occasion of the marriage of the individual and any sum received from any relative. As such, Rs.2 lakh received from friends on the occasion of marriage is exempt. However, brother of father-in-law is not included in the definition of relative. Hence, Rs.1 lakh is taxable under the head "Income from other sources".

The statement that Rs.3 lakh is includible in A's income is, therefore, false.

Question 4

Write short notes on any three of the following with reference to the provisions of Income-tax Act, 1961:

- (a) Amortisation of expenditure incurred under voluntary retirement scheme.
- (b) Provisions of presumptive taxation for computing profits and gains of civil construction under section 44AD of the Income-tax Act, 1961.
- (c) Restrictions on deductions allowable to the partnership firm in respect of salary and interest to its partners under section 40(b) of the Income-tax Act, 1961.
- (d) Provisions of self-assessment under section 140A of the Income-tax Act, 1961.

(6 x 3 =18 Marks)

Answer

- (a) Section 35DDA applies to an assessee who has incurred expenditure in any previous year in the form of payment to any employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement.

The amount of deduction allowable is one-fifth of the amount paid during that previous year, and the balance in four equal installments in the four immediately succeeding previous years.

In case of amalgamation, demerger, reorganization or succession of business during the intervening period of the said 5 years, the benefit of deduction will be available to the "new company" for the balance period including the year in which such amalgamation/demerger/reorgainsation or succession takes place.

This will be applicable in the following situations:

- (i) where the undertaking of an Indian company is transferred to another Indian company in a scheme of amalgamation;
- (ii) where the undertaking of an Indian company is transferred to another company in a scheme of demerger;
- (iii) where due to a re-organisation of business, a firm is succeeded by a company fulfilling the conditions in section 47(xiii) or a proprietary concern is succeeded by a company fulfilling the conditions in section 47(xiv).

In the above cases, the deduction shall be available to the successor company as such deduction would have applied to the original entity if such transfer had not taken place.

It is further provided that no deduction shall be available to the original entity being the amalgamating company, or the demerged company or the firm/ proprietary concern (as the case may be) for the previous year in which the amalgamation, demerger or succession takes place.

No deduction shall be allowed in respect of the above expenditure under any other provision of the Act.

- (b)
 - (i) Section 44AD provides for estimating the income of an assessee who is engaged in the business of civil construction or supply of labour for civil construction.
 - (ii) The income will be estimated at a sum equal to 8% of the gross receipts paid or payable to the assessee in the previous year on account of such business. However, if the assessee declares a higher amount in his return of income, that will be deemed to be his income.
 - (iii) This presumptive tax provision will apply only to such assesses, engaged in the business of civil construction or supply of labour for civil construction, whose gross receipts paid or payable do not exceed Rs.40 lakh.
 - (iv) The assessee will be deemed to have been allowed deductions under sections 30 to 38. Accordingly, the written down value of any asset used for the purpose of the business of the assessee will be deemed to have been calculated as if the assessee had claimed and had actually been allowed the deduction in respect of depreciation for each of the relevant assessment years.
 - (v) The provisions of sections 44AA and 44AB shall not apply in case of such business, where presumptive tax provisions of section 44AD are applicable.
 - (vi) In the case of a firm to which the provisions of section 44AD are applied, the salary and interest paid to its partners, subject to the conditions and limits specified in section 40(b), shall be deducted from the income computed under section 44AD(1).
 - (vii) An assessee may claim lower profits and gains than the deemed profits and gains specified in (ii) above subject to the condition that the books of account and other documents are kept and maintained as required under sub-section (2) of section 44AA and the assessee gets his accounts audited and furnishes a report of such audit as required under section 44AB.
- (c) In the case of a partnership firm, the deduction on account of interest and salary paid to its partners are subject to the following restrictions contained in section 40(b) -
 - (i) It should be authorised by and in accordance with the terms of the partnership deed.
 - (ii) It should not relate to a period before the date of such deed.
 - (iii) Remuneration should be paid to a working partner.
 - (iv) The amounts allowable are subject to the following limits -
 - (1) In the case of interest

Simple interest up to 12% p.a. is allowable. This restriction is not applicable if a person is a partner in the firm in his representative capacity and he receives interest from the firm in his individual capacity. Similarly, the restriction is also not applicable if a person who is a partner in his individual capacity receives interest for and on behalf of someone else from the firm in which he is a partner.

- (2) In the case of salary, bonus, commission or remuneration paid by a firm to its working partners – It should not exceed the amount specified in the table below -
- | | | |
|------|--|--|
| (i) | In the case of a professional firm | |
| (a) | On the first one lakh of book profit or in case of a loss | Rs.50,000 or 90% of book profit, whichever is higher |
| (b) | On the next one lakh of book profit | @ 60% |
| (c) | On the balance of book profit | @ 40% |
| (ii) | In the case of any other firm | |
| (a) | On the first Rs.75,000 of book profit or in case of a loss | Rs.50,000 or 90% of book profit, whichever is higher |
| (b) | On the next Rs.75,000 of the book profit | @ 60% |
| (c) | On the balance of book profit | @ 40% |
- (d) (i) Where any tax is payable on the basis of any return required to be filed under section 139 or in response to a notice issued under section 142(1) or under section 148 or under section 153A, as the case may be, the assessee is required to compute the tax payable by him after considering the following:
- the amount of tax, if any, already paid under any provision of the Act;
 - tax deducted at source and tax collected at source;
 - double taxation relief;
 - credit of minimum alternate tax available to companies.
- (ii) Such tax should be paid together with interest, if any, before filing the return of income. Interest is attracted under section -
- 234A for delay in filing return of income;
 - 234B for default in payment of advance tax; and
 - 234C for deferment of advance tax.
- (iii) The return shall be accompanied by proof of payment of such tax and interest.
- (iv) When any amount paid by the assessee falls short of the aggregate of the tax and interest, the amount so paid shall first be adjusted towards interest and the balance, if any, shall be adjusted towards the tax payable.
- (v) After a regular assessment is made under section 143 or section 144 or an assessment is made under section 153A, any amount paid under this section shall be deemed to have been paid towards such regular assessment or an assessment, as the case may be.
- (vi) An assessee, who fails to pay the whole or any part of such tax or interest or both, shall be deemed to be an assessee in default.

Question 5

- (a) State, with brief reasons, whether the following statements are true or false as per the provisions of Central Sales-tax Act, 1956:
- (i) Works contracts are not liable for Central sales-tax.
 - (ii) A branch outside the State is also a dealer.
 - (iii) A dealer must obtain registration only if the turnover exceeds the limit prescribed in Sales-tax law of the 'Appropriate State'.
 - (iv) If the person furnishing surety dies, the dealer must inform the occurrence within 90 days.
 - (v) Insurance charges incurred prior to delivery of goods to the buyer would form part of the turnover. (5 x 2 = 10 Marks)
- (b) Fill in the blanks in the light of the provisions of Central Sales-tax Act:
- (i) A & Co. of Mumbai sold goods to B & Co. of Chennai. A & Co. is not a registered dealer under the CST Act. A & Co. (can/cannot) collect tax from B & Co. for the inter-State sale.
 - (ii) Government gives subsidy to compensate the cost of production which is more than controlled sale price. The subsidy so received (would/would not) form part of turnover.
 - (iii) Javed of Lucknow purchased goods from Bedi of Kanpur and paid State sales tax @8%. Later, Javed sold those goods to Jain of Mumbai. Javed.....(can/cannot) claim refund of tax paid on within the State purchase as he has done inter-state sale of those goods subsequently.
 - (iv) Raj of Mysore sold paddy to Ram of Delhi. Ram converted paddy into rice and exported later. The sale by Raj to Ram is(sale in the course of export/an inter-state sale).
 - (v) World & Co. despatched goods to its agent Best Ltd. The onus of proving it as transfer to agent is on(principal/agent/sales tax authority). (5 x 1 = 5 Marks)

Answer

- (a) (i) False - According to section 2(g), "Sale", inter-alia, includes a transfer of property in goods involved in the execution of a works contract.
- (ii) True - As per Explanation 1 to section 2(b), a branch office outside the State is also a dealer on deemed basis.
- (iii) False - Section 7(1) provides that every dealer liable to pay tax shall apply for registration. A dealer is liable to pay tax when he effects an inter-State sale. Therefore, every dealer selling goods, even worth a rupee must apply for being registered. There is no exemption limit in this regard.

- (iv) False - As per section 7(3C), where the security furnished by a dealer is in the form of a surety bond and the surety dies, the dealer should inform the registering authority about the occurrence of such event within 30 days.
 - (v) True - As per section 2(h), "Sale price" includes any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof. Therefore, insurance charges incurred by the dealer prior to delivery of goods to the buyer would form part of the turnover.
- (b) (i) cannot
- (ii) would not
- (iii) cannot
- Note – Refund of State sales tax can be claimed only in respect of declared goods. Since the State sales tax in respect of the goods in question is more than 4%, the said goods are not declared goods. Therefore, Javed cannot claim refund of tax paid within the State.
- (iv) sale in the course of export
- Note – This answer is based on the assumption that a declaration in Form H is furnished to the prescribed authority.
- (v) principal

Question 6

Explain any two of the following with reference to the provisions of the Central Sales-tax Act:

- (a) State any five forms/declarations used by dealers for availing concessional rate of tax/exemption from tax.
- (b) When is a sale said to take place in the course of inter-state trade or commerce?
- (c) Hari, a Registered Dealer (with Head Office at Mumbai), furnishes the following information:

	Rs.
(i) Inter-state sale of goods (of this Rs.8,10,000 is the value of goods transferred to branch at Chennai and covered by Form "F")	38,00,000
(ii) Dharmada collected	4,450
(iii) Weightment dues charged separately from buyers	1,05,000
(iv) Cash discount shown in invoice and allowed according to prevailing trade practice	50,000
(v) Indemnity charges (recovered from buyers to cover transit loss at their request)	44,000

Calculate the turnover and CST payable if all sales are made to registered dealers @ 4%.
(2x5 = 10 Marks)

Answer

- (a) Forms and declarations used by dealers for availing concessional rate of tax or exemption from tax

Form C: This is furnished by purchasing registered dealer to the selling dealer. Furnishing this form would entitle a concessional rate of tax on inter-State sale of goods.

Forms E-I and E-II: As per section 6(2) of the Central Sales Tax Act, the first inter-State sale is taxable. Subsequent sale by transfer of documents of title during the movement of goods from one State to another is exempt from tax, if the purchasing dealer obtains a declaration from the selling dealer i.e. registered dealer from whom goods were purchased. The selling dealer has to give a declaration to the purchasing dealer in Form E-I if it is a first sale and Form E-II if it is a second or subsequent sale.

Form F: It is a declaration issued by the dealer for transfer of goods to the branch or consignment agent. The principal need not pay tax on such movement of goods though the physical movement is between two States.

Form H: This is issued by exporter to the dealer. The dealer can get benefit of exemption as per section 5(3).

Form I: This form is obtained by the selling dealer from his customer in SEZ for getting tax benefit under section 8(6).

Form J: This is a form of declaration obtained by the selling dealer from embassies for availing the benefit of exemption under section 6(3).

Note – Any five of the above forms may be given in the answer.

- (b) Sale in the course of inter-state trade or commerce

Section 3 states that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce in the following two circumstances:

- (i) If the sale or purchase occasions the movement of goods from one State to another; or
- (ii) If the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one State to another.

Where the movement of goods commences and terminates in the same State, it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

The movement of goods from a head office in one State to a branch office in another State is not an inter-State sale. However, if such movement from head office to branch is against a pre-existing purchase order with a branch office, it is an inter-State sale.

(c) Computation of taxable turnover and CST

Particulars	Rs.	Rs.
Total inter-State sale of goods		38,00,000
Less: Transfer of goods to branch covered by Form F as these are not inter-State sales		8,10,000
		29,90,000
Add: Dharmada (forms part of sale price)	4,450	
Weightment dues charged separately from buyers also forms part of sale price	1,05,000	
Indemnity charges do not form part of sale price – Hence, should not be added	-	1,09,450
		30,99,450
Less: Cash discount allowed as per trade practices – does not form part of sale price – Hence, should be deducted		50,000
Taxable turnover		30,49,450

Central Sales-tax @ 4%	1,21,978
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Note - The above solution has been worked out on the assumption that dharmada, weightment dues and indemnity charges are shown separately in the invoice and have not been included in the total value of inter-State sale of Rs.38 lakh and cash discount has also not been deducted therefrom. It is also assumed that the sale value of Rs.38 lakh does not include Central Sales-tax.