

PE-II – SUGGESTED ANSWERS – MAY 2005 EXAMS

The Suggested Answers for Paper – 5 : Income-tax and Central Sales Tax are based on the provisions applicable for A.Y.2005-06, which is the assessment year relevant for May 2005 exams.

PAPER – 5 : INCOME TAX AND CENTRAL SALES TAX

Answer all questions

Question 1

(a) *From the following particulars furnished by Mr. X for the year ended 31.3.2005, you are requested to compute his total income and tax payable for the assessment year 2005-06:*

- (1) *Mr. X retired on 31.12.2004 at the age of 58, after putting in 25 years and 9 months of service, from a private company at Mumbai.*
- (2) *He was paid a salary of Rs.25,000 p.m. and house rent allowance of Rs.6,000 p.m. He paid rent of Rs.6,500 p.m. during his tenure of service.*
- (3) *On retirement, he was paid a gratuity of Rs.3,50,000. He was not covered by the payment of Gratuity Act. His average salary in this regard may be taken as Rs.24,500. Mr.X had not received any other gratuity at any point of time earlier, other than this gratuity.*
- (4) *He had accumulated leave of 15 days per annum during the period of his service; this was encashed by Mr. X at the time of his retirement. A sum of Rs.3,15,000 was received by him in this regard. His average salary may be taken as Rs.24,500.*
- (5) *After retirement, he ventured into textile business and incurred a loss of Rs.80,000 for the period upto 31.3.05.*
- (6) *Mr. X has invested Rs.22,500 in recognised provident fund, Rs.40,000 in public provident fund and Rs.37,500 in National Savings Certificates. (15 marks)*

(b) *Mr. Y submits the following information pertaining to the year ended 31st March, 2005 :*

- (1) *On 30.11.2004, when he attained the age of 60, his friends in India gave a flat at Surat as a gift, each contributing a sum of Rs.20,000 in cash. The cost of the flat purchased using the various gifts was Rs.3.4 lacs.*
- (2) *His close friend abroad sent him a cash gift of Rs.75,000 through his relative, for the above occasion.*
- (3) *Mr. Y sold the above flat on 30.1.2005 for Rs.3.6 lacs. The Registrar's valuation for stamp duty purposes was Rs.3.7 lacs. Neither Mr. Y nor the buyer, questioned the value fixed by the Registrar.*
- (4) *He had purchased some equity shares in X Pvt. Ltd. on 5.2.2004 for Rs.3.5 lacs. These shares were sold on 15.3.2005 for Rs.2.8 lacs.*

You are requested to calculate the total income of Mr. Y for the assessment year 2005-06

[Cost Inflation Index for F.Y. 2003-04-463 and F.Y. 2004-05-480]. (6 marks)

- (c) Total income of Mrs. Priti, aged 64, a resident of Mumbai for the financial year 2004-05 is Rs.1,10,500. It includes an income of Rs.22,000 from the business of dealing in shares on which she has paid securities transaction tax of Rs.1,500. She has also deposited Rs.15,000 in her P.P.F. account with the State Bank of India. Compute her tax liability for the A.Y. 2005-06. (6 marks)

Answer

(a) Computation of total income of Mr.X for A.Y.2005-06

Particulars	Rs.	Rs.	Rs.
Income from salaries			
Basic Salary (Rs.25,000 × 9 months)			2,25,000
House rent allowance			
Actual amount received		54,000	
Less: Exemption u/s 10(13A)		36,000	18,000
Least of the following -			
(i) HRA actually received	54,000		
(ii) Rent paid in excess of 10% of salary			
(Rs.6,500 – Rs.2,500) × 9 months	36,000		
(iii) 50% of salary	1,12,500		
Gratuity			
Actual amount received		3,50,000	
Less: Exemption u/s 10(10)(iii)		3,06,250	43,750
Least of the following			
(i) Actual amount received	3,50,000		
(ii) Half month average salary for each year of completed service			
($\frac{1}{2} \times 24,500 \times 25$)	3,06,250		
(iii) Statutory Limit	3,50,000		
Leave encashment			
Actual amount received		3,15,000	
Less: Exemption u/s 10(10AA)		2,45,000	70,000
Least of the following			

(i)	Actual amount received	3,15,000	
(ii)	10 months average salary (24,500 × 10)	2,45,000	
(iii)	Cash equivalent of unavailed leave calculated on the basis of maximum 30 days for every year of actual service rendered to the employer from whose service he retired (See Note 3 below)	3,06,250	
(iv)	Statutory limit	3,00,000	
Gross Salary			3,56,750
Less: Standard deduction u/s 16(i)			30,000
Net Salary			3,26,750
Profits and gains from business or profession			
Business loss of Rs.80,000 to be carried forward as the same cannot be set off against salary income with effect from A.Y. 2005-06			Nil
Gross Total Income			3,26,750
Less: Deduction under Chapter VI-A			Nil
Total Income			3,26,750

Computation of tax liability of Mr.X for the A.Y.2005-06

Particulars	Rs.	Rs.	Rs.
Tax on the above income		72,025	
Less: Rebate u/s 88			
RPF	22,500		
PPF	40,000		
NSC	37,500		
	1,00,000		
Qualifying amount restricted to	70,000		
Rebate@15% of Rs.70,000		10,500	
Tax due			61,525
Add: Education cess @ 2%			1,231
Tax payable			62,756
Note -			

1. No surcharge is leviable since total income is less than Rs.8.50 lakhs.
2. Rebate u/s 88 is 15% as his gross total income exceeds Rs.1.50 lakhs.
3. The leave entitlement of Mr. X as per his employer's rules is not given in the question. It has been assumed that the leave entitlement of Mr.X as per his employer's rules is 30 days credit for each year of service. Since Mr. X had accumulated 15 days per annum during the period of his service, he would have availed/taken the balance 15 days leave every year.

Leave entitlement of Mr.X on the basis of 30 days for every year of actual service rendered by him to the employer	= 30 days/year x 25 =	750 days
Less: Leave taken/availed by Mr.X during the period of his service	= 15 days/year x 25 =	375 days
Earned leave to the credit of Mr.X at the time of his retirement		<u>375 days</u>

Cash equivalent of earned leave to the credit of Mr. X at the time of his retirement = $375 \times 24,500/30 =$ Rs.3,06,250

4. Mr.X is entitled, as per Rule 21A(3), to claim relief under section 89(1) in respect of gratuity received by him in excess of the limits prescribed under section 10(10)(iii).

(b) **Computation of total income of Mr.Y for A.Y.2005-06**

Particulars	Rs.	Rs.	Rs.
Capital Gains			
Short term capital gains (on sale of flat)			
(i) Sale consideration	3,60,000		
(ii) Stamp duty valuation	3,70,000		
Consideration for the purpose of capital gains as per section 50C (Stamp duty value, since it is higher than sale consideration)		3,70,000	
Less: Cost of acquisition [Cost to previous owner as per section 49(1)(ii)]		<u>3,40,000</u>	30,000
Long term capital loss on sale of equity shares of X Pvt. Ltd.			
Sale consideration		2,80,000	
Less: Indexed cost of acquisition (3,50,000 × 480/463)		<u>3,62,851</u>	
Long term capital loss to be carried forward		82,851	

(See Note 1 below)

Income from other sources

Gift received from a close friend (unrelated person) [See Note 2 below] 75,000

Total Income 1,05,000

Note -

1. Shares held for not more than 12 months immediately preceding the date of transfer are short-term capital assets as per section 2(42A) and its proviso. In the given problem, shares have been held for more than 12 months and hence, constitute a long term capital asset. The loss arising from sale of such shares, is therefore a long-term capital loss. As per section 70(3), long term capital loss can be set-off only against long-term capital gains. Therefore, long-term capital loss cannot be set-off against short-term capital gains. However, such long-term capital loss can be carried forward to the next year for set-off against long-term capital gains arising in that year. They can be carried forward for a maximum of 8 assessment years.
2. Gifts in excess of Rs.25,000 from an unrelated person received on or after 1.9.2004 will be deemed as income and taxed as income from other sources [Section 56(2)(v)].
3. Gifts received from unrelated person is not taxable if the amount received from each such unrelated person is less than Rs.25,000 per annum. Further, gifts in kind are excluded from the scope of section 56(2)(v).

(c) Computation of tax liability of Mrs. Priti for A.Y. 2005-06

Particulars	Rs.	Rs.
Tax on total income of Rs.1,10,500		11,100
Less: Rebate u/s		
88D [11,100- (1,10,500 – 1,00,000)]	600	
88 (20% × 15,000)	3,000	
88C	5,000	
88E (i) Rs.1,500 or		
(ii) Rs.2,210 (22,000 × 10.045%*), whichever is less	1,500	10,100
		<u>1,000</u>
Add: Education cess @2%		20
Total tax liability		<u>1,020</u>

*Average rate of tax = $11,100/1,10,500 \times 100 = 10.045\%$

Note – It is also possible to take the view that the average rate of tax has to be computed after giving effect to rebate under Chapter VIII-A. In that case, the average rate of tax would be 2.262% [i.e. $\frac{2,500}{1,10,500} \times 100$].

****** $11,100 - 600 - 3,000 - 5,000 = 2,500$

The rebate under section 88E would be Rs.498 [i.e. the lower of the following – (i) Rs.1,500; or (ii) Rs.498 (being $22,000 \times 2.262\%$)]. Total rebate under Chapter VIII-A would work out to Rs.9,098. Total tax liability would be Rs.2,042 [Rs.2,002 (i.e., $11,100 - 9,098$) + Rs.40 (being education cess of 2% on Rs.2,002)]

Question 2 (First Alternative)

- (a) Explain briefly the tax treatment of compensation received in restraint of trade, under section 28(va). (9 marks)
- (b) What are intangible assets? Give four examples. What is the rate of depreciation on a block of intangible assets? (4 marks)

Answer

- (a) Compensation received in restraint of trade is an income chargeable to tax under the head "Profits and gains of business or profession" as per the provisions of section 28(va). It includes any sum whether received or receivable, in cash or kind, under an agreement for -

- (a) not carrying out any activity in relation to any business; or
- (b) not sharing any know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

However, sub-clause (a) above is not applicable in respect of -

- (a) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business which is chargeable under the head "Capital gains".
- (b) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone Layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with Government of India.

In the above context, it is to be noted that

- (i) "agreement" includes any arrangement or understanding or action in concert, whether or not the same is
 - (A) formal or in writing, or
 - (B) intended to be enforceable by legal proceedings
- (ii) "service" means service of any description which is made available to potential

users. It includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging.

- (b) Intangible assets are assets which are not corporeal i.e., not capable of being touched. Such assets are represented by rights of the persons through them.

According to Explanation 3(b) to section 32(1), the following are intangible assets -

- (a) Know-how
- (b) Patents
- (c) Copyrights
- (d) Trade marks
- (e) Licences
- (f) Franchises
- (g) any other business or commercial rights of similar nature.

They are to be depreciated at the rate of 25%, being the rate prescribed in Part B of Appendix I of Income-tax Rules, 1962.

Note – Students are required to mention any four of the above intangible assets.

Question 2 (Second Alternative)

- (a) *Briefly explain about aggregation of agricultural income for rate purposes. How will income-tax be computed where an individual derives agricultural as well as non-agricultural income ?* (5 marks)
- (b) *Explain whether any deduction is available from the gross total income of a company in respect of any contribution given to a political party.* (4 marks)
- (c) *How is "dividend stripping" enforced by section 94(7) of the Income-tax Act, 1961?* (4 marks)

Answer

- (a) Agricultural income is exempt from tax under section 10(1). However, it is to be included for determining the rate at which non-agricultural income is chargeable to tax. This is provided for in the Finance Act each year. The procedure for computation of tax payable on non-agricultural income after aggregation of agricultural income is as follows -
- (i) Aggregate the agricultural income with non-agricultural income and determine the tax payable on such amount.
 - (ii) Aggregate the agricultural income with the basic exemption limit (i.e. 50,000) and determine the tax payable on such amount.

- (iii) The difference between the tax computed in step (i) and step (ii) will be the tax payable in respect of non-agricultural income.

The income-tax so arrived at by the method of aggregation described above, has to be reduced by rebate under Chapter VIII-A and increased by surcharge, where applicable, and education cess.

In the case of assesseees such as partnership firms, companies etc., whose income is chargeable to tax at a flat rate, aggregation of agricultural income has no effect. In the case of every individual, HUF, AOP or BOI and every artificial juridical person, the Finance Act prescribes slab rates of income-tax and in such cases agricultural income has to be aggregated for rate purposes.

If the non-agricultural income does not exceed the basic exemption limit, then the agricultural income should not be aggregated. No tax will be payable by the assessee in such a case. Further, aggregation of agricultural income for rate purposes is not required if the agricultural income does not exceed Rs.5,000 during the previous year.

- (b) Any sum contributed by an Indian company in the previous year to any political party shall be allowed as deduction under section 80GGB while computing its total income. For the purposes of this section, the word “contribute” has the meaning assigned to it under section 293A of the Companies Act, 1956. Accordingly,
 - (i) any donation/subsorption/payment caused to be given by a company on its behalf or on its account to a person who is carrying on any activity which is likely to effect public support for a political party is deemed to be contribution to such person for a political purpose.
 - (ii) any amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed:-
 - 1. where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
 - 2. where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.
- (c) According to section 94(7), where –
 - (a) any person buys or acquires any securities or units within a period of three months prior to the record date; and
 - (b) such person sells or transfers such securities within a period of three months after such record date or transfers such units within a period of 9 months after such record date; and
 - (c) the dividend or income on such securities or units received or receivable by such person is exempt from tax,

then, the loss, if any, arising to him on account of such purchase and sale of securities or units, to the extent such loss does not exceed the amount of dividend or income received or receivable on such securities or units, has to be ignored for the purposes of computing his income chargeable to tax.

Question 3

- (a) Mr. Sukhvinder is engaged in the business of plying goods carriages. On 1st April, 2004, he owns 10 trucks (out of which 6 are heavy goods vehicles). On 2nd May, 2004, he sold one of the heavy goods vehicles and purchased a light goods vehicle on 6th May, 2004. This new vehicle could however be put to use only on 15th June, 2004.

Compute the total income of Mr. Sukhvinder for the assessment year 2005-06, taking note of the following data :

	Rs.	Rs.
Freight charges collected		8,70,000
Less : Operational expenses	6,25,000	
Depreciation as per section 32	1,85,000	
Other office expenses	15,000	8,25,000
Net Profit		45,000
Other business and non-business income		70,000

(6 marks)

- (b) Choose the correct answer with reference to the provisions of the Income-tax Act, 1961 (All sub-divisions relate to the assessment year 2005-06) : (11x1=11 marks)

- (i) Surcharge of 10% is payable by an individual where the total income exceeds:
- Rs.7,50,000
 - Rs.8,50,000
 - Rs.10,00,000
 - None of the three.
- (ii) Additional surcharge (Education cess) of 2% is payable on
- Income-tax
 - Income-tax plus surcharge, if any
 - Surcharge
 - Not payable by any assessee.
- (iii) Family pension received by a widow of a member of the armed forces where the death of the member has occurred in the course of the operational duties in the circumstances and subject to prescribed conditions, is

- (a) *Exempt upto Rs.3,00,000*
 - (b) *Exempt upto Rs.3,50,000*
 - (c) *Totally exempt under section 10(19)*
 - (d) *Totally chargeable to tax.*
- (iv) *In respect of shares held as investment, while computing the capital gains, securities transaction tax paid in respect of sale of listed shares sold in a recognized stock exchange,*
- (a) *Is deductible upto Rs.1,00,000*
 - (b) *Is deductible upto Rs.2,00,000*
 - (c) *Is deductible where capital gains is below Rs.5,00,000*
 - (d) *Is not deductible at all.*
- (v) *Gift of Rs.5,00,000 received on 10th July, 2004 through account payee cheque from a non-relative regularly assessed to income-tax, is*
- (a) *A capital receipt not chargeable to tax*
 - (b) *Chargeable to tax as income from other sources*
 - (c) *Chargeable to tax as business income*
 - (d) *Exempt upto Rs.25,000 and balance chargeable to tax as income from other sources.*
- (vi) *For an individual deriving total income of Rs.1,01,000, tax rebate under Section 88D is*
- (a) *Rs.83,000*
 - (b) *Rs.82,000*
 - (c) *Rs.84,000*
 - (d) *None of the above.*
- (vii) *The maximum rebate allowable under section 88E to an individual deriving income of Rs.2,00,000 from taxable securities transactions, who has paid securities transactions tax of Rs.14,600 and whose average rate of income-tax is 8%, is*
- (a) *Rs.16,000*
 - (b) *Rs.20,600*
 - (c) *Rs.14,600*
 - (d) *None of the above.*
- (viii) *For an individual who has derived short-term capital gains of Rs.40,000 from transfer of listed equity shares after 1.10.2004, with other income of Rs.20,000 (these two items above making up his total income), income-tax payable in respect of short-term capital gains is*

- (a) Rs.4,000
 - (b) Rs.8,000
 - (c) Rs.1,000
 - (d) None of the above.
- (ix) For an employee in receipt of hostel expenditure allowance for his three children, the maximum annual allowance exempt under Section 10(14) is
- (a) Rs.10,800
 - (b) Rs.7,200
 - (c) Rs.9,600
 - (d) Rs.3,600.
- (x) For an eligible new industrial undertaking fulfilling the conditions, additional depreciation in respect of a machinery costing Rs.10 lacs acquired and installed on 3.10.2004 is
- (a) Rs.75,000
 - (b) Rs.1,50,000
 - (c) Rs.1,00,000
 - (d) None of the above.
- (xi) The time limit for passing an order of revision under section 263 by the Commissioner of income-tax, where the same is to give effect to a direction by the High Court is
- (a) Two years from the date of direction
 - (b) Three years from the date of direction
 - (c) Two years from the end of the financial year in which the direction is given
 - (d) There is no time limit.

Answer

- (a) Section 44AE would apply in the case of Mr. Sukhvinder since he is engaged in the business of plying goods carriages and owns not more than ten goods carriages at any time during the previous year 2004-05.

Section 44AE provides for computation of business income of such assessee on a presumptive basis. The income shall be deemed to be Rs.3,500 from a heavy goods vehicle and Rs.3,150 from a vehicle other than a heavy goods vehicle for every month or part the month during which such goods vehicle is owned by the assessee in the previous year or such higher sum as declared by the assessee in his return of income.

Mr. Sukhvinder's business income calculated applying the provisions of section 44AE is Rs.4,02,850 (See Notes 1 & 2 below) and his total income would be Rs.4,72,850.

However, as per section 44AE(7), Mr. Sukhvinder may claim lower profits and gains if he keeps and maintains proper books of account as per section 44AA and gets the same audited and furnishes a report of such audit as required under section 44AB. If he does so, then his income for tax purposes from goods carriages would be Rs.45,000 instead of Rs.4,02,850 and his total income would be Rs.1,15,000.

Note –**1. Computation of total income of Mr. Sukhvinder for A.Y.2005-06**

Particulars	Presumptive income	Where books are maintained
	Rs.	Rs.
Income from business of plying goods carriages (See Note 2 below)	4,02,850	45,000
Other income	70,000	70,000
Total income	4,72,850	1,15,000

2. Calculation of presumptive income as per section 44AE

Type of Carriage	Period during which trucks are owned	No. of months	Rate per month	Amount
(1)	(2)	(3)	(4)	(5)
4 Light goods vehicles	01.04.2004 to 31.03.2005	12	3,150	1,51,200
1 Light goods vehicle	06.05.2004 to 31.03.2005	11	3,150	34,650
5 Heavy goods vehicles	01.04.2004 to 31.03.2005	12	3,500	2,10,000
1 Heavy goods vehicle	01.04.2004 to 02.05.2004	2	3,500	7,000
			Total	4,02,850

(b)**Sub-division****Answer**

(i)	(b)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(a)
(vi)	(d)
(vii)	(c)
(viii)	(c)
(ix)	(b)
(x)	(a)
(xi)	(d)

Question 4

Write short notes on any **three** of the following:

- (a) Additional depreciation
- (b) Signatory to return of income filed by an individual and partnership firm
- (c) "Income accruing" and "Income due". Can an income which has been taxed on accrual basis be assessed again on receipt basis?
- (d) Exceptions under section 10(10D) as regards exemption of any sum received under a life insurance policy. (6 x 3 = 18 marks)

Answer**(a) Additional depreciation**

Additional depreciation is allowable on any new machinery or plant (other than ships and aircraft) acquired and installed after 31.3.2002 by an assessee engaged in the business of manufacture or production of any article or thing at the rate of 15% of the actual cost of such machinery or plant.

The additional depreciation is available to

- (a) a new industrial undertaking in the previous year in which it begins to manufacture or produce any article or thing on or after 1.4.2002; or
- (b) an existing industrial undertaking in the previous year in which it achieves substantial expansion. "Substantial expansion" is computed with reference to the installed capacity as on 31.3.2002. The increase in installed capacity should be atleast 10%.

Additional depreciation is not available in respect of the following assets:

- (A) any machinery or plant
 - already used in India or outside India by any other person; or
 - installed in office premises, residential accommodation or guest house; or
 - the whole of the actual cost of which is allowed as deduction in computing the income under the head "Profits and gains of business or profession" of any one previous year.
- (B) any office appliances or road transport vehicles.

Additional depreciation will be taken into consideration for computing the WDV of the relevant block. For claiming additional depreciation, the assessee should file along with the return of income the details of machinery or plant and increase in the installed capacity of production in the prescribed form along with a report of an accountant as defined in *Explanation* below section 288(2), certifying that the deduction has been correctly claimed.

(b) According to section 140, in the case of an individual, the following can sign the return of income:

1. The individual himself;
2. Where he is absent from India, by the individual himself or by any other person duly authorised by him in this behalf;
3. Where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and
4. Where, for any other reason, it is not possible for the individual to sign the return, by any person duly authorised by him in this behalf.

However, in case of (2) and (4) above, the person signing the return of income should hold a valid power of attorney from the individual to do so, which should be attached to the return.

In the case of partnership firm, the following can sign the return of income:

1. The managing partner.
2. If there is no managing partner or if the managing partner is not able to sign and verify the return for any unavoidable reason, then by any partner of the firm not being a minor.

(c) Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. For e.g. salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January. Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.

Income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation. For example, when a loan to a director has already been treated as dividend under section 2(22)(e) and later dividend is declared, distributed and adjusted against the loan, the same cannot be treated as dividend income again.

(d) **Exceptions under section 10(10D) as regards exemption of any sum received under a life insurance policy:**

Section 10(10D) provides that any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy should not be included in the total income of the recipient.

However, there are certain exceptions to the exemption under section 10(10D), which are briefed hereunder -

- (i) Any sum received under section 80DD(3) or under section 80DDA(3); or
- (ii) Any sum received under a Keyman insurance policy; or

- (iii) Any sum received under an insurance policy issued on or after 1.4.03 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured. However, such sum received under such policy on the death of a person shall continue to be exempt.

For the purpose of calculating the actual capital sum assured,

- (a) the value of any premiums agreed to be returned or
(b) any benefit by way of bonus or otherwise, over and above the sum actually assured, which is to be or may be received under the policy by any person
shall not be taken into account.

Question 5

- (a) Explain the term "declared goods". Furnish any eight items of such declared goods under the CST Act. (5 marks)
(b) Briefly discuss about transactions involving inter-State transfer of goods otherwise than by way of sale. What is the proof to be submitted in this regard under the CST Act? (4 marks)
(c) What is the extent of liability of a director of a private company in liquidation? (4 marks)

Answer

- (a) Declared goods means goods declared under section 14 of Central Sales Tax Act, 1956 to be of special importance in inter-State trade or commerce [Section 2(c)].

Examples of declared goods are:-

- (i) Cereals
(ii) Coal, including coke in all its forms, but excluding charcoal
(iii) Cotton (indigenous or imported) in its un-manufactured state, whether ginned or unginned, baled, processed or otherwise, but not including cotton waste
(iv) Cotton fabrics
(v) Cotton yarn, but not including cotton yarn waste
(vi) Crude oil
(vii) Hides and skins, whether in a raw or dressed state
(viii) Iron and steel
(ix) Jute
(x) Oil seeds
(xi) Pulses
(xii) Man made fabrics

- (xiii) Sugar
- (xiv) Un-manufactured tobacco and tobacco refuse, cigars and cheroots of tobacco, cigarettes and cigarillos of tobacco and other manufactured tobacco
- (xv) Woven fabrics of wool
- (xvi) Aviation Turbine Fuel sold to a Turbo-Prop Aircraft

Note – Students are required to mention any 8 of the above declared goods.

- (b) Section 6A states that a transaction in the nature of transfer of goods from the head office of the principal in one State to a branch or an agent in another State or vice-versa does not attract tax under the Act. This is because the movement of such goods from one State to another was occasioned by reason of transfer of such goods by the dealer to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale.

The burden of proving that the movement of such goods was so occasioned is on the dealer. For this purpose, the dealer has to furnish a declaration to the assessing authority within the prescribed time in the prescribed form i.e. Form F, duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, along with evidence of despatch of such goods.

- (c) The liability of a director of a private company arises when the private company is wound up and any tax assessed on the company under the Central Sales Tax Act, 1956 for any period, whether before or in the course of or after its liquidation, cannot be recovered. In such a situation, section 18 of the Act imposes liability on every person who was a director of the private company at any time during the period for which the tax is due. Every director would be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Question 6

- (a) Discuss whether the following statements are true or false, under the CST Act:
- (i) An Adatiya who brings together the buyer and seller of goods for commission and does not effect sale on his own account but brokers between the buyers and sellers for settling the price is not liable to be registered under the CST Act.
 - (ii) An Insurance Company, which has taken possession of damaged goods of the insured is a dealer if such goods are sold by the insurance company later on.
 - (iii) Profit motive is essential to call an activity a "Business" under the CST Act.
 - (iv) CST is leviable on transactions of leasing/hiring of assets for a defined period.
- (4x2=8 marks)
- (b) Choose the correct answer with reference to the provisions of the CST Act :
- (i) The collection of central sales tax is done by

- (a) *the State in which the movement of goods has first taken place;*
 - (b) *the State in which the movement of goods ends;*
 - (c) *the Central Government directly*
 - (d) *none of the agencies above.*
- (ii) *R Oils Ltd., New Delhi sent via its pipeline special purified oil to B Ltd. in Noida, Uttar Pradesh, through its branch at Noida. This transaction has to be regarded as :*
- (a) *Branch transfer by HO to branch*
 - (b) *Branch transfer by HO to branch and then sale within State by the branch of R Oils Ltd. to B Ltd.*
 - (c) *Inter-State sale*
 - (d) *Intra-State sale.*
- (iii) *X effected his first inter-state sale on 12.3.2005 and applied for registration on 10.4.2005. The effective date of registration will be :*
- (a) *10.4.2005*
 - (b) *12.3.2005*
 - (c) *12.4.2005*
 - (d) *Date on which the registering authority issues the registration certificate.*
- (iv) *In case of inter-State sale to the Government , the applicable rate of tax is*
- (a) *Nil*
 - (b) *Always 4%*
 - (c) *4% or the sales tax rate for the concerned goods in the appropriate State, whichever is higher*
 - (d) *4% or the sales tax rate for the concerned goods in the appropriate State, whichever is lower.*
- (4x1=4 marks)*

Answer

- (a) (i) **True.** A *Kachha Adatiya* does not sell goods on his own account. He merely does the job of broking between the buyer and seller for settling the price for which service he gets commission. Therefore, he is not liable to be registered under the Central Sales Tax Act as a dealer.
- (ii) **True.** An insurance company which has taken possession of the damaged goods of the insured is a dealer, if such goods are sold later on.
- (iii) **False.** Profit motive is not essential to call an activity a business under the Central Sales Tax Act. The definition of "business" clearly mentions that for an activity to be called 'business' under section 2(aa), profit motive is not necessary.

- (iv) **True.** CST is leviable on transactions of leasing/hiring of assets for a defined period. According to section 2(g) of the Central Sales Tax Act, transaction of leasing and hiring of assets for a defined period is deemed to be a sale.

- (b) (i) (a)
(ii) (c)
(iii) (b)
(iv) (d)