

The Suggested Answers for Paper – 5: Income-tax and Central Sales Tax are based on the provisions applicable for A.Y.2006-07, which is the assessment year relevant for November 2006 examination.

PAPER – 5 : INCOME TAX AND CENTRAL SALES TAX

Answer all questions

Question 1

- (a) Mr. Rajesh is serving in a public limited company as General Manager (Finance). His total emoluments for the year ended 31st March, 2006 are as follows:

Basic Salary	Rs 5,40,000
HRA (Computed)	Rs. 1,80,000
Transport allowance	Rs. 12,400

Apart from the above, his employer has sold the following assets to him on 1st January, 2006:

- (i) Laptop computer for Rs.20,000 (Acquired in September, 2004 for Rs.1,20,000).
- (ii) Car 1800 cc for Rs.3,20,000 (purchased in April, 2003 for Rs.8,50,000).

He also owns a residential house, let out for a monthly rent of Rs.15,000. The fair rental value of the property for the let out period is Rs.1,50,000. The house was self-occupied by him from 1st January, 2006 to 31st March, 2006. He has taken a loan of Rs.20 lacs for the construction of the property, and has repaid Rs.1,05,000 (including interest Rs.40,000) during the year.

Mr. Rajesh sold shares of different Indian companies on 14th April, 2005:

Name	Sale value (per share)	Purchase price (per share)	Acquired on	No. of shares
A Ltd.	Rs.150	Rs.120	2 nd May, 2003	200
B Ltd.	Rs.82	Rs.65	16 th April, 2004	125

Sale proceeds were subject to brokerage of 0.1% and securities transaction tax of 0.075% on the gross consideration. He received I.T. refund of Rs.5,750 (including interest Rs.750) relating to the Asst. Year 2004-05.

Compute the total income of Mr. Rajesh for the Assessment Year 2006-07. (20 Marks)

- (b) Mr. Malik owns a factory building on which he had been claiming depreciation for the past few years. It is the only asset in the block. The factory building and land appurtenant thereto were sold during the year. The following details are available.

	Rs.
Building completed in September, 2001 for	10,00,000

Land appurtenant thereto purchased in April, 2000 for	12,00,000
Advance received from a prospective buyer for land in May, 2001, forfeited in favour of assessee, as negotiations failed	50,000
WDV of the building block as on 1.4.2005	8,74,800
Sale value of factory building in November, 2005	8,00,000
Sale value of appurtenant land	16,00,000

The assessee is ready to invest in long-term specified assets under section 54EC, within specified time.

Compute the amount of taxable capital gain for the assessment year 2006-07 and the amount to be invested under section 54EC for availing the maximum exemption.

Cost inflation indices are as under -

Financial Year	Cost inflation index
2001-02	426
2002-03	447
2005-06	497

(10 Marks)

Answer

(a) Computation of total income of Mr. Rajesh for the A.Y. 2006-07

	Rs.
Income from salaries (Working note 1)	9,86,800.00
Income from house property (Working note 2)	1,00,000.00
Capital gains	
Short-term capital gains (Working note 3)	2,114.75
Income from other sources: Interest on I.T. refund	750.00
Gross Total Income	10,89,664.75
Less: Deduction under Chapter VIA	
Deduction under section 80C	
Repayment of housing loan (principal) [See Note below]	65,000.00
Total Income	10,24,664.75
Total Income (rounded off)	10,24,660

Note – It is presumed that the housing loan has been taken from a borrower approved under section 80C (for example, a bank) for the purpose of availing deduction under that section.

Working Notes -

1. Income from salaries	Rs.	Rs.
Basic Salary		5,40,000
HRA (computed)		1,80,000
Transport allowance	12,400	
Less: Exempt under section 10(14) [Rs.800 × 12]	<u>9,600</u>	2,800
Perquisites (relating to sale of movable assets by employer)		
Laptop Computer		
Cost [September, 2004]	1,20,000	
Less: Depreciation at 50% for one completed year	<u>60,000</u>	
WDV [September, 2005]	60,000	
Less: Amount paid to the employer	<u>20,000</u>	
Perquisite value of laptop (A)	<u>40,000</u>	
Car		
Cost [April, 2003]	8,50,000	
Less: Depreciation for the 1 st year (April'03 to March'04) @ 20% of WDV	<u>1,70,000</u>	
WDV [April, 2004]	6,80,000	
Less: Depreciation for the 2 nd year (April'04 to March'05) @ 20% of WDV	<u>1,36,000</u>	
WDV [April, 2005]	5,44,000	
Less: Amount paid to the employer	<u>3,20,000</u>	
Perquisite value of car (B)	<u>2,24,000</u>	
Perquisite value (A) + (B)		<u>2,64,000</u>
Income chargeable under the head "Salaries"		<u>9,86,800</u>

2. Income from house property

Section 23(2) provides that the annual value of a self-occupied house shall be taken as Nil. However, section 23(3) provides that the benefit of self-occupation would not be available if the house is actually let during the whole or part of the previous year. This implies that the benefit of taking the annual value as nil would be available only if the house is self-occupied for the whole year.

In this case, therefore, the benefit of taking annual value as Nil is not available since the house is self-occupied only for 3 months. In such a case, the gross annual value has to be computed as per section 23(1). Accordingly, the fair rent for the whole year should be compared with the actual rent for the let-out period and whichever is higher shall be adopted as the Gross Annual Value.

Particulars	Rs.	Rs.
Gross Annual Value (higher of fair rent for the whole year and actual rent for the let-out period)		2,00,000
Fair rent for the whole year = Rs.1,50,000 × 12/9	2,00,000	
Actual rent received = Rs.15,000 × 9	1,35,000	
Less: Municipal taxes		Nil
Net Annual Value (NAV)		2,00,000
Less: Deductions under section 24		
30% of NAV	60,000	
Interest on loan [See Note below]	40,000	1,00,000
Income from house property		1,00,000

Note – It is presumed that the interest of Rs.40,000 paid on housing loan represents the interest actually due for the year.

3. Income chargeable as “Capital Gains”

Section 10(38) exempts long-term capital gain on sale of equity shares of a company, if such transaction is chargeable to securities transaction tax. Since Mr.Rajesh has held shares of A Ltd. for more than 12 months, the gains arising from sale of such shares is a long-term capital gain, which is exempt under section 10(38), since securities transaction tax has been paid on such sale.

Shares in B Ltd. are held for less than 12 months and hence the capital gains arising on sale of such shares is a short-term capital gain chargeable to tax @10% as per section 111A, since the transaction is subject to securities transaction tax. It may be noted, however, that securities transaction tax is not a deductible expenditure.

Short-term capital gains arising from sale of shares of B Ltd.

Sale consideration (82 × 125)	10,250.00
Less: Brokerage @ 0.1%	10.25
Net sale consideration	10,239.75
Cost of acquisition (65 × 125)	8,125.00
Chargeable STCG	2,114.75

(b) Computation of taxable capital gain of Mr. Malik for A.Y.2006-07

Particulars	Rs.	Rs.
Factory building		
Sale price of building	8,00,000	
Less: WDV as on 1.4.2005	8,74,800	
Short-term capital loss on sale of building		(-) 74,800
Land appurtenant to the above building		
Sale value of land	16,00,000	
Less: Indexed cost of acquisition		
11,50,000 × 497/406	14,07,759	
Long-term capital gains on sale of land		1,92,241
Chargeable long-term capital gains [Long-term capital gains minus short-term capital loss = 1,92,241-74,800 = 1,17,441]		1,17,441

Investment under section 54EC

In this case, both land and building have been held for more than 36 months and hence, are long-term capital assets. Exemption under section 54EC is available if the capital gains arising from transfer of a long-term capital asset is invested in long-term specified assets like bonds of National Highways Authority of India and Rural Electrification Corporation Ltd., redeemable after three years. As per section 54EC, the amount to be invested for availing the maximum exemption is the net amount of capital gain arising from transfer of long-term capital asset, which is Rs.1,17,441 in this case.

Notes –

- Where advance money has been received by the assessee, and retained by him, as a result of failure of the negotiations, section 51 will apply. The advance retained by the assessee will go to reduce the cost of acquisition. Indexation is to be done on the cost of acquisition so arrived at after reducing the advance money forfeited.
- Since the land was purchased in April, 2000, the cost inflation index of F.Y.2000-01 is relevant, which is not given in the question. The cost inflation index for F.Y.2000-01 is 406. .
- Factory building on which depreciation has been claimed, is a depreciable asset. Profit / loss arising on sale is deemed to be short-term capital gain/loss as per section 50, and no indexation benefit is available.
- Land is not a depreciable asset, hence section 50 will not apply. Being a long-term capital asset (held for more than 36 months), indexation benefit is available.

5. As per section 74, short term capital loss can be set-off against any income under the head "Capital gains", long-term or short-term. Therefore, in this case, short-term capital loss of Rs.74,800 can be set-off against long-term capital gain of Rs.1,92,241.

Question 2 (First Alternative)

- (a) Mr. A is an individual carrying on business. His stock and machinery were damaged and destroyed in a fire accident.

The value of stock lost (total damaged) was Rs.6,50,000. Certain portion of the machinery could be salvaged. The opening WDV of the block as on 1-4-2005 was Rs.10,80,000.

During the process of safeguarding machinery and in the fire fighting operations, Mr. A lost his gold chain and a diamond ring, which he had purchased in April, 2002 for Rs.1,20,000. The market value of these two items as on the date of fire accident was Rs.1,80,000.

Mr. A received the following amounts from the insurance company:

- | | |
|---|-------------|
| (i) Towards loss of stock | Rs.4,80,000 |
| (ii) Towards damage of machinery | Rs.6,00,000 |
| (iii) Towards gold chain and diamond ring | Rs.1,80,000 |

You are requested to briefly comment on the tax treatment of the above three items under the provisions of the Income-tax Act, 1961. (7 Marks)

- (b) Briefly discuss about the exceptions to the rule that income of an assessee for a previous year will be charged to tax in the subsequent assessment year. (5 Marks)

Answer

- (a) (i) Compensation towards loss of stock

Any compensation received from the insurance company towards loss/damage to stock in trade is to be construed as a trading receipt. Hence, Rs.4,80,000 received as insurance claim for loss of stock has to be assessed under the head "Profit and gains of business or profession".

Note - The assessee can claim the value of stock destroyed by fire as revenue loss, eligible for deduction while computing income under the head "Profits and gains of business or profession".

- (ii) Compensation towards damage to machinery

The question does not mention whether the salvaged machinery is taken over by the Insurance company or whether there was any replacement of machinery during the year. Assuming that the salvaged machinery is taken over by the Insurance company, and there was no fresh addition of machinery during the year, the block of machinery will cease to exist. Therefore, Rs.4,80,000 being the excess of written

down value (i.e. Rs.10,80,000) over the insurance compensation (i.e. Rs.6,00,000) will be assessable as a short-term capital loss.

Note – If new machinery is purchased in the next year, it will constitute the new block of machinery, on which depreciation can be claimed for that year.

(iii) Compensation towards loss of gold chain and diamond ring

Gold chain and diamond ring are capital assets as envisaged by section 2(14). They are not “personal effects”, which alone are to be excluded. As per section 45(1A), if any profit or gain arises in a previous year owing to receipt of insurance claim, the same shall be chargeable to tax as capital gains. The capital gains has to be computed by reducing the indexed cost of acquisition of jewellery from the insurance compensation of Rs.1,80,000.

- (b) The income of an assessee for a previous year will be charged to income-tax in the subsequent assessment year. However, in a few cases, this rule does not apply and the income is taxed in the same year in which it is earned. Thus, in these cases, the assessment year and the previous year are the same. These exceptions are as follows:

1. Shipping business of non-resident [Section 172]

Where a ship, belonging to or chartered by a non-resident carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax due has been paid or satisfactory arrangement has been made for payment thereof. Seven and a half per cent of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India, on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.

2. Persons leaving India [Section 174]

Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year upto the probable date of his departure from India is chargeable to tax in that assessment year.

3. AOP/BOI/Artificial Juridical Person formed for a particular event or purpose [Section 174A]

If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same assessment year in which it is formed or immediately after such assessment year, the Assessing Officer can make assessment of the total income of such person up to the date of dissolution. Such total income is chargeable to tax in that assessment year itself.

4. Persons likely to transfer property to avoid tax [Section 175]

During the current assessment year if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose off or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year for that assessment year upto the date when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year itself.

5. Discontinued business [Section 176]

Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt. By virtue of section 176(4), where any profession is discontinued in any year on account of the cessation of the profession or by the retirement or death of the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax in the year of receipt.

Question 2 (Second Alternative)

- (a) Discuss briefly about the deductibility of interest on loan taken for higher education, under section 80E of the Income-tax Act, 1961. (6 Marks)
- (b) What are the documents/prescribed transactions, relating to which an allottee of PAN, should quote his PAN? (6 Marks)

Answer

- (a) Deduction under section 80E
 - (i) Section 80E provides deduction to an individual-assessee in respect of any interest on loan paid by him in the previous year out of his income chargeable to tax.
 - (ii) The loan must have been taken for the purpose of pursuing his higher education i.e. full-time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics.
 - (iii) The loan must have been taken from any financial institution or approved charitable institution.
 - (iv) The deduction is allowed in computing the total income in respect of the initial assessment year (i.e. the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan) and seven assessment years immediately succeeding the initial assessment year or until the interest is paid in full by the assessee, whichever is earlier.
- (b) All persons who have been allotted PAN, should quote the same, inter alia, in all documents pertaining to the following transactions -
 - (a) in all returns of income (including FBT return) and correspondence with any income-

tax authority;

- (b) in all challans for the payment of tax, interest or any other sum due under the Act;
- (c) in all transactions entered into by him, as may be prescribed by the CBDT. The following transactions have been notified by the CBDT so far -
 - (i) sale or purchase of any immovable property valued at Rs.5 lakhs or more;
 - (ii) sale or purchase of any motor vehicle (other than two wheeled vehicles) requiring registration under the Motor Vehicles Act, 1988;
 - (iii) time deposit exceeding Rs.50,000 with any bank;
 - (iv) deposit exceeding Rs.50,000 in any account with Post Office Savings Bank;
 - (v) contract for sale or purchase of securities exceeding Rs.1 lakh;
 - (vi) opening a bank account (in case of minor, PAN of parent/guardian may be given);
 - (vii) applying for a telephone connection (including cellular telephone);
 - (viii) bill payments to hotels or restaurants exceeding Rs.25,000 at any one time;
 - (ix) cash payment for purchase of bank drafts or pay orders or bankers cheque from a banking company for an amount aggregating Rs.50,000 or more during any one day;
 - (x) cash deposits aggregating Rs.50,000 or more with a banking company during any one day;
 - (xi) cash payment exceeding Rs.25,000 in connection with travel to any foreign country at any one time;
 - (xii) making an application to any bank or banking institution or company or any institution for issue of a credit card;
 - (xiii) making an application to any mutual fund for purchase of its units for an amount of Rs.50,000 or more;
 - (xiv) making an application to a company for acquiring shares for an amount of Rs.50,000 or more;
 - (xv) making an application to a company or institution for acquiring debentures for an amount of Rs.50,000 or more;
 - (xvi) making an application to Reserve Bank of India for acquiring its bonds for an amount of Rs.50,000 or more.

Note – Any 10 of the transactions mentioned in (c) above may be given in the answer.

Question 3

- (a) State with reasons, whether the following statements are true or false (All sub-divisions relate to income-tax assessment year 2006-07):

- (i) In the case of an artificial juridical person, no surcharge is payable where the total income exceeds Rs.10,00,000.
- (ii) A non-Indian company is treated as resident, only if the control and management of its affairs is situated wholly in India during the previous year.
- (iii) In order to be eligible to claim deduction under section 80C, investment/contribution/subscription etc. in eligible or approved modes, should be made from out of income chargeable to tax.
- (iv) Partnership firms deriving loss need not file return of income.
- (v) Where an assessee engaged in business is obligated to deduct tax at source pertaining to interest payment in India during the earlier year and has failed to do so, but deducts and pays the same belatedly, during the current year, he can claim the said interest as deductible business expenditure in the current year.

(5 x 2 = 10 Marks)

(b) Fill up the blanks (All sub-divisions relate to income-tax assessment year 2006-07):

- (i) As per section 2(47), or..... of a zero coupon bond will be treated as "transfer" for the purpose of capital gains tax.
- (ii) An assessee, after sale of house property, receiving arrears of rent,(is/is not) chargeable to tax; the same computed in the stipulated manner, shall be chargeable to tax as..... (income from other sources/income from house property/question does not arise since there is no chargeability to tax).
- (iii) A motor car is the only asset in a block. Cost Rs.2,00,000. Rate of depreciation is 15%. 20% is disallowed for estimated personal use. WDV of the block is Rs.....
- (iv) Mr. A gifts cash of Rs.1,00,000 to his brother's wife Mrs.B. Mr. B gifts cash of Rs.1,00,000 to Mrs. A. From the cash gifted to her, Mrs. B invests in a fixed deposit, income therefrom is Rs.10,000. Aforesaid Rs.10,000 will be included in the total income of
- (v) The time limit for filing revised return where assessment has not been completed is

(5 x 1 = 5 Marks)

Answer

(a) (i) False

In the case of artificial juridical persons, surcharge of 10% is payable on the tax on total income, whether such total income is less than Rs.10,00,000 or more.

(ii) True

The test of residence for companies contained in section 6(3) lays down this condition. If a non-Indian company is to be treated as resident in India in any previous year, the control and management of its affairs should be situated wholly in India during that year.

(iii) False

There is no stipulation under section 80C that the investment, subscription, etc. should be made from out of income chargeable to tax.

(iv) False

Consequent to the amendment to section 139(1) made by the Finance Act, 2005, it is compulsory for partnership firms to file their return of income or loss in every previous year, on or before the due date.

(v) True

The proviso to section 40(a)(ia) provides that where tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under section 200(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

(b) (i) maturity, redemption

(ii) is, income from house property

(iii) 1,76,000

(iv) Mr. B

(v) One year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier

Question 4

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

(a) Exemption for retrenchment compensation under section 10(10B).

(b) Carry forward and set off of unabsorbed depreciation.

(c) Cost of acquisition of self-generated assets, in the context of capital gains.

(d) Power to transfer cases under section 127. (6 x 3 = 18 Marks)

Answer

(a) Exemption for retrenchment compensation under section 10(10B)

1. As per section 10(10B), exemption is available in respect of any compensation received by a workman at the time of his retrenchment under -

(a) the Industrial Disputes Act, 1947; or

(b) any other Act or rules, order or notification issued thereunder; or

(c) any standing order; or

(d) any award, contract of service or otherwise.

Such compensation received is exempt from tax to the extent of lower of the following –

- (i) actual amount received
 - (ii) an amount calculated in accordance with the provisions of section 25F(b) of the Industrial Disputes Act, 1947 which is equal to 15 days average pay for every completed year of service or part thereof in excess of 6 months
 - (iii) Rs.5,00,000, being the amount specified by the Central Government.
2. The aforesaid limits will not apply in cases where the compensation is paid under any scheme approved by the Central Government, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances. In such cases, the entire amount of compensation received would be exempt under section 10(10B).
3. Compensation received by a workman at the time of closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment.
4. On many occasions, workers are retrenched when the ownership of the undertaking changes hands. Compensation received by a workman, at the time of the transfer of the ownership or management of the undertaking in which he is employed from the present employer to a new employer, shall be deemed to be compensation received at the time of retrenchment if the following conditions are fulfilled:
- (a) The service of the workman has been interrupted by such transfer; or
 - (b) The terms and conditions of service applicable to the workman in the new job are less favourable to him than before; or
 - (c) The new employer is legally not liable to pay compensation to the workman, in the event of his retrenchment, on the basis that his service has been continuous and has not been interrupted by the transfer.
- (b) Carry forward and set off of unabsorbed depreciation

Section 32(2) provides for carry forward of unabsorbed depreciation.

Where, in any previous year, the profits or gains chargeable are not sufficient to give full effect to the depreciation allowance, such unabsorbed depreciation shall be added to the depreciation allowance for the following previous year and shall be deemed to be part of that allowance.

If there is no depreciation allowance for that previous year, the unabsorbed depreciation of the earlier previous year shall become the depreciation allowance of that year. The effect of the provisions of section 32(2) is that unabsorbed depreciation brought forward shall be deemed as the current year depreciation. Consequently, such unabsorbed depreciation can be set-off not only against income under the head "Profits and gains of business or profession" but also against income under any other head. Further, the unabsorbed depreciation can be carried forward indefinitely till it is fully set off.

However, in the order of set-off losses under different heads of income, effect shall first be given to current year depreciation, then to brought forward business losses and finally to unabsorbed depreciation.

(c) Cost of acquisition of self-generated assets, in the context of capital gains

1. Cost of acquisition of a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing, or right to carry on any business, tenancy rights, stage carriage permits and loom hours [Section 55(2)(a)]
 - (i) If the above capital assets have been purchased by the assessee, the cost of acquisition is the amount of the purchase price. For example, if Mr. A purchases a stage carriage permit from Mr. B for Rs.2 lacs, that will be the cost of acquisition for Mr. A.
 - (ii) If the above capital assets are self-generated, the cost of acquisition shall be taken as nil.
 - (iii) In case the capital asset is acquired by any mode given under clauses (i) to (iv) of section 49(1), the cost of acquisition will be the cost to the previous owner if the previous owner paid for it. However, if it was self-generated by the previous owner, the cost of acquisition will be taken as nil.
2. Cost of acquisition of other self-generated assets not covered under section 55(2)(a) -

In respect of self-generated goodwill of a profession and other self-generated assets not specifically covered under section 55(2)(a), the decision of the Supreme Court in CIT v. B.C. Srinivasa Setty [1981] 128 ITR 294 will apply. In that case, the Supreme Court held that if the cost of acquisition of a self-generated asset is incapable of determination, then transfer of such asset is not taxable and consequently the gains thereon cannot be brought to charge.

(d) Power to transfer cases under section 127

- (i) The power to transfer a case from one Assessing Officer to another subordinate Assessing Officer is vested with the Director General or Chief Commissioner or Commissioner of income-tax. However, this power can be exercised only after giving the assessee a reasonable opportunity of being heard, wherever possible and after recording reasons for doing so.
- (ii) There may be situations where the Assessing Officer from whom the case is transferred and the Assessing Officer to whom the case is transferred do not fall under the control of the same Director General or Chief Commissioner or Commissioner of Income-tax. In such cases, the Director General or Chief Commissioner or Commissioner of Income-tax from whose jurisdiction the case is transferred shall pass an order, if such concerned higher authorities mutually agree for such transfer.
- (iii) If the higher authorities are not in agreement about the transfer, then, the Board or

any such authority authorized by the Board may pass the order.

- (iv) If the case is transferred between Assessing Officers within the same city or locality or place, then, it is not necessary to give the assessee an opportunity of being heard.
- (v) The transfer of a case may be made at any stage of the proceedings and it is not necessary to reissue any notice already issued.

Question 5

- (a) Discuss whether the following statements are true or false, as per the provisions of the Central Sales-tax Act:
 - (i) Definition of "Sales tax law" includes "Value added tax law".
 - (ii) The term "works contract" has not been defined.
 - (iii) For the penultimate sale to be deemed as a sale in the course of export, it is possible only if a declaration in prescribed form is furnished by the dealer selling goods.
 - (iv) The applicable rate of tax where undeclared goods are sold in an inter-state sale to a registered dealer, if the purchases of such goods is not covered in dealer's registration certificate, is 4% or the State sales tax rate, whichever is lower.
 - (v) Transfer of goods on payment of hire charges, without transfer of property in the goods, will still constitute sale. (5 x 2 = 10 Marks)
- (b) Answer the following with regard to the provisions of the Central Sales-tax Act, 1956
 - (i) "Crossing the customs frontiers of India" means crossing the limits of the area of customs station in which imported or exported goods are ordinarily kept
 - (a) after clearance by customs authorities
 - (b) before clearance by customs authorities
 - (c) before being loaded into the ship or carrier
 - (d) None of the above.
 - (ii) For any trade, commerce, manufacture, etc. to be treated as "business"
 - (a) profit or gain should accrue from such trade, commerce, etc. in all years
 - (b) profit or gain should accrue from such trade, commerce, etc. after at least first five years
 - (c) profit or gain need not accrue from such trade, commerce, etc.
 - (d) None of the above.
 - (iii) The burden of proving that transfer of goods is otherwise than by way of sale, lies on -
 - (a) dealer who claims exemption

- (b) assessing authority who alleges that it is a taxable sale
 - (c) the carrier who moves the goods
 - (d) None of the above.
- (iv) Amendment of certificate of registration can be made
- (a) only upon an application made by the assessee
 - (b) by the Assessing authority suo motu
 - (c) on a application from assessee, or by the assessing authority suo motu on information received from any other source
 - (d) None of the above.
- (v) Inter-state sale of stationery to the following class of dealer is liable to tax at the normal rate of 4% or the State Government rate, whichever is lower:
- (a) Government Department issuing Form D
 - (b) Manufacturing company issuing Form C
 - (c) Any dealer, provided appropriate form is obtained
 - (d) None of the above.
- (5 x 1 = 5 Marks)

Answer

- (a) (i) True
- The definition of "Sales tax law" as per section 2(i) has been amended to include a reference to value added tax law consequent to the introduction of VAT.
- (ii) False
- Clause (ja) has been inserted in section 2 to define "Works Contract" to mean 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.
- (iii) True
- The Finance Act, 2005 has inserted sub-section (4) in section 5 to provide that the penultimate sale would be deemed to be a sale in the course of export only if the dealer selling the goods furnishes to the prescribed authority a declaration in the prescribed form (Form H), duly filled in and signed by the exporter to whom the goods are sold.
- (iv) False
- The applicable rate will be 4% or the State sales tax rate, whichever is lower, only if the goods are covered in the registration certificate of the dealer. In the given situation, the rate of tax will be 10% or the State sales tax rate, whichever is higher.

(v) True

The definition of the term "sale" as per section 2(g) includes, inter-alia, a delivery of goods on hire-purchase. Therefore, a delivery of goods on hire-purchase is deemed to be a sale.

Note - It may be noted that Clause (29A) of Article 366 of the Constitution of India defines the term "tax on sale or purchase of goods" to include, inter-alia, a tax on the delivery of goods on hire purchase. It is further provided that such delivery of goods shall be deemed to be a sale of those goods by the person making the delivery.

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

Question 6

Write short notes on any two of the following, with reference to the provisions of the CST Act:

- (a) Sale price
- (b) Sale to personnel, consular or diplomatic agent of any foreign diplomatic mission
- (c) Difference between a sale for export and sale in the course of export. (5 x 2 = 10 Marks)

Answer

- (a) As per section 2(h), sale price means the amount payable to a dealer as consideration for the sale of any goods.

It shall include any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof to the buyer. The following sums shall, however, be deducted from the sale price :-

- (i) Cash discount allowed to the buyer according to the prevailing trade practice;
- (ii) Cost of freight or delivery or the cost of installation, provided they are separately charged.

The proviso to section 2(h) enables determination of sale value of goods transferred in execution of works contract. Where there is any element of transfer of property in goods involved in the execution of a works contract, the sale price of such goods will be determined in the prescribed manner by making such deduction, as may be prescribed, from the total consideration for the works contract.

- (b) Section 6(3) provides for exemption of tax on sale of any goods made by a dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of any foreign diplomatic mission or consulate in India or the United Nations or any

other similar international body entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force.

However, the official, personnel, consular or diplomatic agent should have purchased such goods for either himself or for the purposes of such mission, consulate, United Nations or other body.

Section 6(4) provides that the dealer selling such goods in the course of inter-State trade should furnish to the prescribed authority, a certificate in the prescribed manner on the prescribed form, duly filled and signed by the official, personnel, consulate or diplomatic agent, as the case may be, for availing the tax exemption.

- (c) If a sale is effected by the seller and he is not connected with the export of the goods which actually takes place later, it will be a sale for export. The seller in this case may or may not have the knowledge that the buyer intends to export the goods purchased. In such a case, the seller does not know the ultimate destination of the goods he has sold.

A sale in the course of export, on the other hand, has an express connection between the sale and the export. The activities of the sale of goods and their exports are so integrated that the connection between the two contracts cannot be interrupted voluntarily, without a breach of the contract or obligation or compulsion arising out of the transaction.

In the case of sale in the course of export, the seller and the buyer must have an intention to export, an obligation to export followed by an actual export of goods. The obligation may arise from any law or contract between the parties or mutual understanding or from the nature of the transaction itself.

