PAPER – 4 : TAXATION

SECTION – A: INCOME TAX

*Question No.**1** is compulsory.*

*Attempt any **four** from the rest.*

Working notes shall form part of the respective answer.

All questions pertaining to income-tax relate to assessment year 2017-18, unless stated otherwise in the question.

Question 1

Mr. Pandey, a resident individual, aged 45 years, is a Chartered Accountant in practice. He maintains his accounts on cash basis. His Profit & Loss Account for the year ended 31st March, 2017 is as follows:

Profit & Loss Account for the year ending March 31, 2017

Expenditure	***Amount (₹)***	***Income***	***Amount (₹)***
Staff Salary	*18,25,000*	*Fees earned*	
Rent of the office premises	*6,00,000*	*Audit*	*23,00,000*
Administrative expenses	*5,75,000*	*Taxation*	*14,50,000*
Stipend to Articled clerks	*1,85,000*	*Consultancy services relating to*	
Meeting, seminars and conferences	*36,500*	*syndication of loan from financial institution*	*10,00,000*
			47,50,000
Depreciation	*55,000*	*Gifts*	*1,00,000*
Printing and Stationery	*8,75,000*	*Dividends from Indian companies*	*12,00,000*
Net Profit	*19,13,500*	*Interest on deposit certificates issued under Gold Monetization Scheme, 2015*	*15,000*
	60,65,000		***60,65,000***

Other Information:

(1) Depreciation allowable under Income-tax Act, 1961 ₹ 1,25,000.

(2) Administrative expenses include ₹ 55,000 paid to a tax consultant in cash for assisting Mr. Pandey in one of the professional assignments.

The Suggested Answers for Paper 4: Taxation are based on the provisions of tax laws as amended by the Finance Act, 2016. The answers to questions on income-tax are based on the provisions of income-tax law applicable for A.Y.2017-18, which is the assessment year relevant for November, 2017 examination.

(3) Gifts represent fair market value of a LED TV which was given by one of the clients for successful presentation of case in the Income Tax Appellate Tribunal.

(4) Last month's rent of ₹ 50,000 was paid without deduction of tax at source.

(5) Mr. Pandey had taken a loan of ₹ 32,00,000 for the purchase of a house property valuing ₹ 45,00.000 from a recognized financial institution on 1st May. 2016. He repaid ₹ 1,50,000 on 31st March, 2017 out of which ₹ 1.00,000 is towards principal payment and the balance is for interest on loan. The possession of the property will be handed over to him in October 2017.

(6) Mr. Pandey paid medical insurance premium of his parents (senior citizens and not dependent on him) by cheque amounting to ₹ 27,000. He also paid ₹ 8,500 by cash towards preventive health checkup for himself and his spouse.

Compute the total income of Mr. Pandey and tax payable by him for Assessment Year 2017-18, assuming that Mr. Pandey does not want to opt for presumptive taxation scheme under section 44ADA. ***(10 Marks)***

Answer

Computation of total income and tax liability of Mr. Pandey for the A.Y. 2017-18

Particulars		Amount (₹)
Profit and gains of business or profession **[See Working Note 1]**		6,98,500
Income from other sources		2,00,000
[Under section 115BBDA, in case of a resident individual, dividend income exceeding ₹ 10 lakh is taxable. Hence, in this case, ₹ 2 lakh (being ₹12 lakh – ₹10 lakh) is taxable]		
Gross Total Income		**8,98,500**
Less: Deductions under Chapter VI-A **[See Working Note 2]**		82,000
Total Income		**8,16,500**
Tax on total income		
Tax@10% on dividend of ₹ 2 lakh	20,000	
Tax on balance income of ₹ 6,16,500		
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 – ₹ 5,00,000 @10%	25,000	
₹ 5,00,001 - ₹ 6,16,500 @20%	23,300	68,300
Add: Education cess@2%		1,366
Secondary and higher education cess@1%		683
Total tax liability		**70,349**
Total tax liability (rounded off)		**70,350**

Working Notes:

(1) Income under the head "Profits & Gains of Business or Profession"

Particulars	₹	₹
Net profit as per Profit and Loss account		19,13,500
Add: **Expenses debited but not allowable**		
(i) Amount paid in cash to a tax consultant and included in administrative expenses disallowed u/s 40A(3), since such cash payment exceeds 20,000	55,000	
(ii) 30% of rent paid without deduction of tax at source disallowed u/s 40(a)(ia) [30% of ₹ 50,000] **[See Note below for alternate view]**	15,000	
(ii) Depreciation as per books of account	55,000	1,25,000
		20,38,500
Less: **Income credited but not taxable or taxable under any other head**:		
(i) Dividend from Indian companies [₹ 10 lakh exempt u/s 10(34) and ₹ 2 lakh taxable under the head "Income from Other Sources"]	12,00,000	
(ii) Interest on deposit certificates issued under Gold Monetisation Scheme 2015 [Exempt u/s 10(15)(vi)]	15,000	
(iii) Gifts [Since it represents the value of benefit received from clients during the course of profession, the same is taxable under section 28(iv) under the head "Profits and gains of business or profession"]	-	
		12,15,000
		8,23,500
Less: Depreciation allowable under the Income-tax Act, 1961		1,25,000
		6,98,500

(2) Deductions under Chapter VI-A

Particulars		₹
Deduction under section 80D (Payment of mediclaim premium)		32,000
Mediclaim premium of ₹ 27,000 paid for insuring the health of parents, being senior citizens, is allowable in full, even if they are not dependent, since the same has been paid by cheque and does not exceed the limit of ₹ 30,000.	27,000	

Preventive health-check up expenses of ₹ 8,500 for self and spouse would qualify for deduction subject to a maximum of ₹ 5,000, even if the payment is made by cash.	5,000	
	32,000	
Deduction under section 80EE (Interest on housing loan)		50,000
Since the possession of the property is handed over only in the P.Y. 2017-18, income would be chargeable to tax under the head "Income from house property" only in the A.Y.2018-19. Hence, Mr. Pandey is not eligible for interest deduction under section 24 and principal deduction under section 80C for A.Y.2017-18. However, section 80EE does not pose any such restriction. Since the value of the house does not exceed ₹ 50 lakh and the amount of loan sanctioned does not exceed ₹ 35 lakh, interest on such loan would qualify for deduction under section 80EE, subject to a maximum of ₹ 50,000[1], assuming that the loan was sanctioned in the F.Y.2016-17, the disbursement having taken place in May 2016.		
Total deduction under Chapter VI-A		82,000

Note: *Mr. Pandey would be liable to deduct tax at source under section 194-I on rent paid during the P.Y.2016-17, only if his gross receipts from profession during the P.Y.2015-16 exceed the monetary limit specified in section 44AB. However, the details of gross receipts from profession during the P.Y.2015-16 is not given in the question but the statement in item no. (4) under "Other Information" that last month's rent of ₹ 50,000 was paid without deduction of tax at source appears to indicate that rent for the remaining months has been paid after deduction of tax at source. Hence, it is logical to take a view that Mr. Pandey has the obligation to deduct tax at source under section 194-I. Accordingly, if he fails to deduct tax on rent paid for the month of March, disallowance under section 40(a)(ia) would be attracted. ₹ 15,000, being 30% of ₹ 50,000, has been disallowed in the above solution on the basis of this reasoning.*

It is also possible to answer the question on the assumption that he is not liable to deduct tax at source on rental payments during the P.Y.2016-17, by presuming that his gross receipts for the P.Y.2015-16 were less than the limit specified in section 44AB. In such a case, disallowance under section 40(a)(ia) would ***not*** *be attracted. If it is so assumed, business income would be ₹ 6,83,500, total income would be ₹ 8,01,500 and consequent tax liability would be ₹ 67,260.*

[1]It is assumed that the loan was sanctioned during the F.Y.2016-17. Further, it assumed that Mr. Pandey does not own any other house property. Such deduction is allowable irrespective of the fact that the possession is handed over only in the F.Y.2017-18.

Question 2

(a) DAISY Ltd. a foreign company incorporated in USA and engaged in the manufacturing and distribution of diamonds set up a branch office in India in June 2016. The branch office was required to purchase uncut and unassorted diamonds from the dealers of Mumbai and export them to USA. During the Previous Year 2016-17, profit from such export amounted to ₹ 75 lakhs.

Out of 20 shareholders of DAISY Ltd., 12 shareholders are non-resident in India. All the major decisions were taken through Board Meetings held at USA.

(i) Determine the residential status of DAISY Ltd. for the Assessment Year 2017-18.

(ii) Discuss the tax treatment of profit from export business. ***(5 Marks)***

(b) Mr. Srivastava, aged 40 years, a salaried employee of Nirja Ltd. was contributing to National Pension Scheme ₹ 50,000 every year since 2014 and was claiming deduction under section 80CCD. In December 2016, he opted out of the pension scheme and withdrew a lump sum amount of ₹ 2,00,000.

Is the amount so withdrawn taxable? If yes, how much is the taxable amount? ***(5 Marks)***

Answer

(a) (i) As per section 6(3), a foreign company would be resident in India in the P.Y.2016-17, if its place of effective management (POEM), in that year, is in India.

"Place of Effective Management" means the place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance, made.

In this case, since all major decisions were taken through Board Meetings held at the USA, the place of effective management of Daisy Ltd., a foreign company incorporated in the USA, is outside India.

Hence, Daisy Ltd. is a non-resident for the P.Y.2016-17 (A.Y.2017-18)

(ii) As per section 5(2), in case of a non-resident, income which, *inter alia,* is deemed to accrue or arise to him in India is taxable in India.

As per *Explanation 1(b)* to section 9(1)(i), in case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

Accordingly, profit of ₹ 75 lakhs from export of uncut and unassorted diamonds purchased from dealers of Mumbai by the branch office of Daisy Ltd. in India would not be deemed to accrue or arise in India in the hands of Daisy Ltd, being a non-resident. Hence, the same would not be taxable in India in the hands of Daisy Ltd.

(b) As per section 80CCD(3), any payment from NPS to an employee [out of amount standing to the credit in his account in respect of which deduction under section 80CCD

has been allowed[2] together with amount accrued thereon] on account of closure or his opting out of the pension scheme shall be deemed to be his income of the previous year in which the amount is received and would, accordingly, be chargeable to tax in his hands in that year.

However, as per section 10(12A), any payment from NPS Trust to an employee on account of closure or his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed 40% of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax.

Accordingly, ₹ 80,000 (being 40% of lump sum withdrawal of ₹ 2 lakh) is exempt.

The balance amount of ₹ 1,20,000 (₹ 2,00,000 – ₹ 80,000) would be deemed as Mr. Srivastava's income of P.Y.2016-17 and would be chargeable to tax in his hands in that year, under the head "Income from other sources".

Question 3

Ms. Jaya is the marketing manager in XYZ limited. She gives you the following particulars:

Basic Salary	*₹ 65,000 p.m.*
Dearness Allowance	*₹ 22,000 p.m. (30% is for retirement benefits)*
Bonus	*₹ 17,000 p.m.*

Her employer has provided her with an accommodation on 1st April, 2016 at a concessional rent. The house was taken on lease by XYZ Ltd. for ₹ 12,000 p.m. Ms. Jaya occupied the house from 1st November. 2016. ₹ 4,800 p.m. is recovered from the salary of Ms. Jaya.

The employer gave her a gift voucher of ₹ 8,000 on her birthday. She contributes 18% of her salary (Basic Pay + DA) towards recognised provident fund and the company contributes the same amount.

The company pays medical insurance premium to effect insurance on the health of Ms. Jaya ₹ 18,000.

Motor car owned by the employer (cubic capacity of engine exceeds 1.6 litres) provided to Ms. Jaya from 1st November, 2016 which is used for both official and personal purposes. Repair and running expenses of ₹ 50,000 were fully met by the company. The motor car was self-driven by the employee.

Compute the income chargeable to tax under the head "Salaries" in the hands of Ms. Jaya for the Assessment Year 2017-18. ***(10 Marks)***

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[2] Section 80CCD provides deduction is respect of amount contributed to National Pension System (NPS), subject to certain limits.

Answer

Computation of income chargeable to tax under the head "Salaries" in the hands of Ms. Jaya for A.Y.2017-18

Particulars	₹
Basic Salary [₹ 65,000 x 12]	7,80,000
Dearness allowance [₹ 22,000 x 12]	2,64,000
Bonus [₹ 17,000 x 12]	2,04,000
Perquisite value in respect of concessional rent[3] ***[See Note (1) below]***	36,000
Gift voucher given by employer on Ms. Jaya's birthday (entire amount is taxable since the perquisite value exceeds ₹ 5,000) ***[See Note 2 below]***	8,000
Employer's contribution to recognized provident fund in excess of 12% of salary is taxable as per section 17(1)(vi) 18% x [(₹ 65,000 + ₹ 22,000) x 12] – 12% x {[₹ 65,000 + ₹ 6,600 (being 30% of ₹ 22,000)] x 12} = 1,87,920 – 1,03,104 [Salary = Basic Salary + Dearness allowance, to the extent it forms part of pay for retirement benefits]	84,816
Medical insurance premium of ₹18,000 paid by the employer to effect an insurance on the health of an employee is an exempt perquisite as per sub-clause (iii) of proviso to section 17(2)	-
Provision of motor car (engine cubic capacity more than 1.6 litres) owned by employer to an employee without chauffeur for both official and personal purpose, where the expenses are fully met by the employer - the perquisite value would be ₹ 2,400 p.m. [₹ 2,400 × 5 months] as per Rule 3(2) of the Income-tax Rules, 1962	12,000
Salary chargeable to tax	**13,88,816**

Notes:

(1) Where the accommodation is taken on lease or rent by the employer, the actual amount of lease rent paid or payable by the employer or 15% of salary, whichever is lower, in respect of the period during which the house is occupied by the employee, as reduced by the rent recoverable from the employee, is the value of the perquisite.

Actual rent paid by employer from 1.11.2016 to 31.3.2017 = ₹ 60,000 [₹ 12,000 x 5 months]

15% of salary = ₹ 66,450 [15% x (₹ 65,000 + ₹ 6,600 + ₹ 17,000) x 5 months]

Lower of the above is ₹ 60,000 which is to be reduced by the rent recovered from the employee.

[3] As per *Explanation 1* to section 17(2)(ii) read with Rule 3(1) of Income-tax Rules, 1962

Hence, the perquisite value of concessional rent = ₹ 60,000 – ₹ 24,000 [₹ 4,800 x 5 months] = ₹ 36,000

Salary for valuation of perquisite = *Basic Salary + Dearness Allowance, to the extent it forms part of pay for retirement benefits + Bonus*

(2) As per Rule 3(7)(iv), the value of any gift or voucher received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift. However, the value of any gift or voucher received by the employee or by member of his household below ₹ 5,000 in aggregate during the previous year would be exempt as per the proviso to Rule 3(7)(iv). In this case, the gift voucher of ₹ 8,000 was received by Ms. Jaya from her employer on the occasion of her birthday. Since the value of the gift voucher exceeds the limit of ₹ 5,000, the entire amount of ₹ 8,000 is liable to tax as perquisite. The above solution has been worked out accordingly.

Alternative view - *An alternate view possible is that only the sum in excess of ₹ 5,000 is taxable in view of the language of Circular No.15/2001 dated 12.12.2001, which states that such gifts upto ₹ 5,000 in the aggregate per annum would be exempt, beyond which it would be taxed as a perquisite. As per this view, the value of perquisite would be ₹ 3,000. The salary chargeable to tax, in this case, would be ₹ 13,83,816.*

Question 4

(a) Mr. Aditya, a resident but not ordinarily resident in India during the Assessment Year 2017-18. He owns two houses, one in Dubai and the other in Mumbai. The house in Dubai is let out there at a rent of DHS 20,000 p.m. (1 DHS = INR 18). The entire rent is received in India. He paid property tax of DHS 2,500 and sewerage tax DHS 1,500 there, for the Financial Year 2016-17. The house in Mumbai is self-occupied. He had taken a loan of ₹ 25,00,000 to construct the house on 1st June, 2013 @12%. The construction was completed on 31st May, 2015 and he occupied the house on 1st June, 2015. The entire loan is outstanding as on 31st March, 2017. Property tax paid in respect of the second house is ₹ 2,400 for the Financial Year 2016-17. Compute the income chargeable under the head "Income from house property" in the hands of Mr. Aditya for the Assessment Year 2017-18. ***(5 Marks)***

(b) Mr. Sunil entered into an agreement with Mr. Dhaval to sell his residential house located at Navi Mumbai on 16.08.2016 for ₹ 80,00,000.

The sale proceeds were to be paid in the following manner:

(i) 20% through account payee bank draft on the date of agreement.

(ii) 60% on the date of the possession of the property.

(iii) Balance after the completion of the registration of the title of the property.

Mr. Dhaval was handed over the possession of the property on 15.12.2016 and the registration process was completed on 14.01.2017. He paid the sale proceeds as per the sale agreement.

The value determined by the Stamp Duty Authority on 16.08.2016 was ₹ 90,00,000 whereas on 14.01.2017 it was ₹ 91,50,000.

Mr. Sunil had acquired the property on 01.04.2001 for ₹ 20,00,000. After recovering the sale proceeds from Dhaval, he purchased another residential house property for ₹ 35,00,000.

Compute the income under the head "Capital Gains" for the Assessment Year 2017-18.

Cost Inflation Index for Financial Year(s)

2000-01- 406; 2001-02- 426; 2016-17 - 1125 ***(5 Marks)***

Answer

(a) Computation of income from house property of Mr. Aditya for A.Y. 2017-18

Particulars	₹	₹
Income from let-out property in Dubai [See Note 1 below]		
[4]Gross Annual Value (DHS 20,000 p.m. x 12 months x ₹18)		43,20,000
Less: Municipal taxes paid during the year [DHS 4,000 (DHS 2,500 + DHS 1,500) x ₹18][5]		72,000
Net Annual Value (NAV)		42,48,000
Less: Deductions under section 24		
(a) 30% of NAV	12,74,400	
(b) Interest on housing loan	-	12,74,400
		29,73,600
Income from self-occupied property in Mumbai		
Annual Value [Nil, since the property is self-occupied]	Nil	NIL
[No deduction is allowable in respect of municipal taxes paid in respect of self-occupied property]		
Less: Deduction in respect of interest on housing loan **[See Note 2 below]**	2,00,000	
		(2,00,000)
Income from house property [₹ 29,73,600 – ₹ 2,00,000]		**27,73,600**

[4] In the absence of information related to municipal value, fair rent and standard rent, the rent receivable has been taken as the GAV

[5] Both property tax and sewerage tax are deductible from gross annual value

Notes:

(1) Since Mr. Aditya is a resident but not ordinarily resident in India for A.Y. 2017-18, income which is, *inter alia,* received in India shall be taxable in India as per section 5(1), even if such income has accrued or arisen outside India. Accordingly, rent received from house property in Dubai would be taxable in India since such income is received by him in India. Income from property in Mumbai would accrue or arise in India and consequently, interest deduction in respect of such property would be allowable while computing Mr. Aditya's income from house property.

(2) **Interest on housing loan for construction of self-occupied property allowable as deduction under section 24(b)**

Interest for the current year (₹ 25,00,000 x 12%)	₹ 3,00,000
Pre-construction interest [from 01.06.2013 to 31.03.2015]	
₹ 25,00,000 x 12% x 22/12 = ₹ 5,50,000	
₹ 5,50,000 allowed in 5 equal installments (₹ 5,50,000/5)	₹ 1,10,000
	₹ 4,10,000
As per the second proviso to section 24(b), in case of self-occupied property, interest deduction to be restricted to	₹ 2,00,000

(b) Computation of income chargeable under the head "Capital Gains" for A.Y. 2017-18

Particulars		₹
Capital Gains on sale of residential house		
Actual sale consideration	₹ 80 lakhs	
Value adopted by Stamp Valuation Authority	₹ 90 lakhs	
Full value of sale consideration [Higher of the above]		90,00,000
[As per section 50C, in case the actual sale consideration declared by the assessee is less than the value adopted by the Stamp Valuation Authority for the purpose of charging stamp duty, then, the value adopted by the Stamp Valuation Authority shall be taken to be the full value of consideration		
In a case where the date of agreement is different from the date of registration, stamp duty value on the date of agreement can be considered provided the whole or part of the consideration is paid by way of account payee cheque/bank draft or by way of ECS through bank account on or before the date of agreement. In this case, since 20% of ₹ 80 lakhs is paid through account payee bank draft on the date of agreement, stamp duty value on the date of agreement can be		

adopted as the full value of consideration]	
Less: Indexed cost of acquisition of residential house	
[₹ 20 lakhs x 1125/426]	52,81,690
Long-term capital gains [Since the residential house property was held by Mr. Sunil for more than 36 months immediately preceding the date of its transfer]	**37,18,310**
Less: **Exemption u/s 54**	35,00,000
The capital gain arising on transfer of a long-term residential property shall not be chargeable to tax to the extent such capital gain is invested in the purchase of one residential house property in India within one year before or two years after the date of transfer of original asset[6].	
Long term capital gains chargeable to tax	**2,18,310**

Question 5

(a) (i) Under section 208, obligation to pay advance tax arises in every case where the advance tax payable is ₹10,000 or more. State exception to this rule. ***(2 Marks)***

(ii) Mr. Subramany is engaged in the business of producing and selling toys. During the previous year 2016-17, his turnover was ₹1.80 crores. He opted for paying tax as per presumptive taxation scheme laid down in section 44AD. He has no other income during the previous year. Is he liable to pay advance tax and if so, what is the minimum amount of advance tax to be paid and the due date for payment of such advance tax? ***(3 Marks)***

(b) Mr. Sachin filed return on 30th September, 2017 related to Assessment Year 2017-18. In the month of October 2017, his tax consultant found that the interest on fixed deposit was omitted in the tax return.

(i) What is the time limit for filing a belated return?

(ii) Can Mr. Sachin file a revised return?

Justify the above with the relevant provisions under section 139.

Assume that the due date for furnishing return of income was 31st July, 2017 and the assessment was not completed till the month of October 2017. ***(5 Marks)***

Answer

(a) (i) Under section 208, obligation to pay advance tax arises in every case where the advance tax payable is ₹10,000 or more. However, as per section 207(2), this requirement will not apply –

[6] It is assumed that he purchased the residential house property in India within the time limit stipulated u/s 54

- in case of a resident individual, who is of the age of 60 years or more during the previous year and
- who does **not** have any income chargeable to tax under the head "Profits and gains of business or profession".

(ii) Computation of advance tax liability in the hands of Mr. Subramany opting for presumptive taxation scheme under section 44AD

Particulars		₹
As per section 211(1)(b), an eligible assessee, opting for computation of profits or gains of business on presumptive basis in respect of an eligible business referred to in section 44AD, shall be required to pay advance tax of the whole amount on or before 15th March of the financial year. Thus, Mr. Subramany is required to pay advance tax for F.Y.2016-17 on or before 15th March, 2017.		
However, any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during that financial year on or before 15th March.		
The advance tax liability is computed as follows –		
Total Income being 8% of ₹1,80,00,000, since Mr. Subramany is an eligible assessee opting for presumptive taxation scheme under section 44AD		14,40,000
(Total income comprises of only income under the head "Profits and gains of business or profession", since Mr. Subramany is not having any other income during the previous year)		
Tax liability		
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 to ₹ 5,00,000@10%	25,000	
₹ 5,00,001 to ₹ 10,00,000@20%	1,00,000	
Above ₹ 10,00,000@30%	1,32,000	2,57,000
Add: Education cess@1% and SHEC@2%		7,710
Total Tax Payable		**2,64,710**
Accordingly, Mr. Subramany is required pay ₹ 2,64,710 as minimum amount of advance tax by 15th March 2017.		

***Note** – In respect of the amount of turnover received by account payee cheque/ bank draft or use of ECS through a bank account, the assessee can declare 6%*

(instead of 8%) of such turnover as presumptive income under section 44AD. The question does not specify whether any part of the turnover has been received by such modes. Accordingly, the solution has been worked out considering presumptive income@8% of turnover.

It can be assumed that the whole amount of turnover is received through banking channel/digital means i.e., by an account payee cheque/bank draft or use of ECS through a bank during the previous year. In such a case, Mr. Subramany's total income would be ₹ 10,80,000 (being 6% of ₹ 1,80,00,000). Tax liability would be ₹ 1,53,470 [₹ 1,49,000 (₹ 1,25,000 + 30% of ₹ 80,000) + ₹ 4,470 (3% of ₹ 1,49,000)], which has to be paid by way of advance tax on or before 15th March, 2017.

(b) (i) As per section 139(4), a belated return for any previous year may be furnished at any time -

(a) before the end of the relevant assessment year; or

(b) before the completion of the assessment,

whichever is earlier.

For assessment year 2017-18, the belated return has to be furnished before 31st March 2018 or before completion of assessment, whichever is earlier.

(ii) As per section 139(5), if any person, having furnished a return within the due date or a belated return, discovers any omission or any wrong statement therein, he may furnish a revised return at any time –

(a) before the expiry of one year from the end of the relevant assessment year or

(b) before the completion of assessment,

whichever is earlier.

Since Mr. Sachin has filed his return after 31.7.2017, being the due date under section 139(1) in his case, but before 31.3.2018/completion of assessment, the said return is a belated return under section 139(4).

Thus, in the present case, Mr. Sachin can file a revised return, since he has found an omission in the belated return filed by him for A.Y.2017-18 and assessment is yet to be completed and one year from the end of A.Y.2017-18 has not elapsed as of October, 2017.

Question 6

*Answer any **two** questions out of the following three questions:*

(a) Mr. Prakash furnishes you the following details in respect of the Financial year 2016-17.

(i) Loss from the business carried on by him as a proprietor: ₹ 11,20,000(*)

(ii) Deduction u/s 80-IB : ₹ 5,50.000 (*)

(iii) Unabsorbed Depreciation: ₹ 4,80.000 (*)

(iv) Loss from House property: ₹ 2,50,000 (*)

(*) Computed as per the Income-tax Act, 1961

The due date for filing the return for Mr. Prakash was 31st July, 2017 under section 139(1). However, he filed the return on 29.9.2017. Discuss with reference to the relevant provisions of Income-tax Act, 1961 if the losses and deductions could be carried forward/claimed by Mr. Prakash.

(b) Kamal gifted ₹ 10 lakhs to his wife, Sulochona on her birthday on, 1st January, 2016. Sulochona lent ₹ 5,00,000 out of the gifted amount to Krishna on 1st April, 2016 for six months on which she received interest of ₹ 50,000. The said sum of ₹ 50,000 was invested in shares of a listed company on 15th October, 2016, which were sold for ₹ 75,000 on 30th December, 2016. Securities transaction tax was paid on such sale. The balance amount of gift was invested as capital by Sulochona in a business. She suffered loss of ₹ 15,000 in the business in Financial Year 2016-17.

In whose hands the above income and loss shall be included in Assessment Year 2017-18? Support your answer with brief reasons.

(c) Ms. Jyoti purchased a house property costing ₹ 49 lakhs on 1st May, 2016. The property is used exclusively for her residential purpose. For this purpose, she obtained loan from DHFL of ₹ 35 lakhs bearing interest @ 14% p.a. on 1st April, 2016. She does not own any other house.

State with brief reasons the deductions that can be claimed by Ms. Jyoti in respect of interest on loan for Assessment Year 2017-18. ***(5 x 2 = 10 Marks)***

Answer

(a) Mr. Prakash has furnished his return of income for A.Y.2017-18 on 29.9.2017, i.e., after the due date specified under section 139(1), 31st July 2017. Hence, the return is a belated return under section 139(4).

As per section 80 read with section 139(3), specified losses, which have not been determined in pursuance of a return of loss under section 139(3) filed within the time specified in section 139(1), cannot be carried forward to the subsequent year for set-off against income of that year. The specified losses include, *inter alia*, business loss to be carried forward under section 72 but does not include loss from house property and unabsorbed depreciation to be carried forward under section 71B and section 32(2), respectively.

Accordingly, business loss of ₹ 11,20,000 of Mr. Prakash for A.Y.2017-18, not determined in pursuance of a return of loss for that year, filed within the time specified in section 139(1), cannot be carried forward to A.Y.2018-19.

However, the loss of ₹ 2,50,000 from house property and unabsorbed depreciation of ₹ 4,80,000 pertaining to A.Y.2017-18, can be carried forward to A.Y.2018-19 for set-off, even though Mr. Prakash has filed the return of loss for A.Y.2017-18 belatedly.

Further, as per section 80AC, furnishing of return of income on or before the due date specified under section 139(1) is mandatory for claiming deduction under, *inter alia,* section 80-IB.

Hence, Mr. Prakash cannot claim deduction of ₹ 5,50,000 under section 80-IB for A.Y.2017-18, since he has not furnished his return of income on or before the due date specified under section 139(1) for that year.

(b) As per section 64(1)(iv), in computing the total income of any individual, there shall be included all such income as arises directly or indirectly, to the spouse of such individual from assets transferred directly or indirectly, to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

Accordingly, ₹ 50,000, being the amount of interest on loan received by Ms. Sulochana, wife of Mr. Kamal, would be includible in the total income of Mr. Kamal, since such loan was given by her out of the sum of money received by her as gift from her husband.

Assuming that the capital was invested in business by Ms. Sulochana on or before 1st April, 2016, and capital invested was entirely out of the funds gifted by her husband, the entire loss of ₹15,000 from the business carried on by Ms. Sulochana would also be includible in the total income of Mr. Kamal [As per *Explanation 3* to section 64(1)(iv)].

If, however, it is assumed that capital invested was partly out of the funds gifted by her husband, the loss includible in the hands of Mr. Kamal has to be determined by apportioning the loss of ₹ 15,000 incurred during the year on the basis of the capital employed on 1.4.2016.

Since income includes loss as per *Explanation 2* to section 64, clubbing provisions would be attracted even if there is loss and not income.

The short-term capital gain of ₹ 25,000 (₹ 75,000, being the sale consideration *less* ₹ 50,000, being the cost of acquisition) arising in the hands of Ms. Sulochana from sale of shares acquired by investing the interest income of ₹ 50,000 earned by her (from the loan given out of the sum gifted to her by her husband), would not be included in the hands of Mr. Kamal.

Income from the accretion of the transferred asset is not liable to be included in the hands of the transferor and therefore such income is taxable in the hands of Ms. Sulochana. Since securities transaction tax has been paid, such short-term capital gain on sale of listed shares is taxable@15% in the hands of Ms. Sulochana.

(c)

Ms. Jyoti can claim the following deductions for the A.Y. 2017-18 in respect of the interest of ₹ 4,90,000 (₹ 35,00,000 x 14%) payable on loan taken for acquisition of residential house **property for self-occupation**:	

Deduction under section 24 while computing income under the head "Income from house property": - Interest on housing loan taken for acquisition of residential house property for self-occupation, would be eligible for deduction under section 24 while computing income from house property, subject to a maximum of ₹ 2,00,000	**2,00,000**
Deduction under section 80EE (while computing deduction under Chapter VI-A from gross total income): Interest payable on housing loan taken by Ms. Jyoti qualifies for deduction under section 80EE, subject to a maximum of ₹ 50,000, since – (i) The loan is sanctioned during the P.Y.2016-17[7] (ii) The value of the house (₹ 49 lakhs) does not exceed ₹ 50 lakhs (iii) The amount of loan sanctioned (₹ 35 lakhs) does not exceed ₹ 35 lakhs (iv) She does not own any residential house on the date of sanction of loan	**50,000**
Therefore, out of the interest of ₹ 4,90,000, ₹ 2 lakhs is allowable as deduction under section 24; and out of the balance of ₹ 2,90,000, ₹ 50,000 is allowable as deduction under section 80EE from gross total income.	

Note *– In the above solution, it has been assumed that the loan is sanctioned on 1.4.2016, being the date of disbursement. Hence, deduction under section 80EE has been provided.*

Since generally banks make the disbursement only when the property is purchased, it is possible to consider 1.5.2016, being the date of purchase, as the date of disbursement and 1.4.2016 as the date of sanction of loan, and accordingly work out the solution. Interest, in such a case, would work out to ₹ 4,49,167. Deduction under section 24 and 80EE would, however, remain the same.

[7] It is presumed that the loan was sanctioned and disbursed on 1.4.2016

SECTION B: INDIRECT TAXES

*Question No.**7** is compulsory.*

*Answer any **four** questions from the rest.*

Question 7

(a) MNO Advertising Agency has provided the following services during March, 2017:

	Particulars	***Amount (₹)***
(i)	*Selling of advertisement time slot on mobile*	*2,00,000*
(ii)	*Aerial Advertisement*	*8,00,000*
(iii)	*Advertisement on bill boards*	*3,60,000*
(iv)	*Charges towards newspaper advertisements*	*7,00,000*
(v)	*Commission earned towards advertisement campaigns*	*6,40,000*
(vi)	*Advertisement on cover and back pages of printed books*	*1,00,000*

You are required to compute value of taxable services of MNO Advertising Agency for March, 2017, not being eligible for Small Service Provider's (SSP) exemption.

Service value tabled above is exclusive of service tax and cess and the applicable rate being 15% (inclusive of SBC & KKC).

Working notes and/or suitable assumptions should form part of your answer. ***(6 Marks)***

(b) In the month of January, 2017, Rajesh Ltd., made total purchases of capital goods and inputs amounting to ₹ 46,00,000.

Following further particulars are provided in respect of purchase and sales:

	Particulars	***Amount (₹)***
(i)	*Purchase from unregistered dealers*	*5,00,000*
(ii)	*Inter-state purchases*	*18,00,000*
(iii)	*Purchase of capital goods (only 50% of its value is eligible for VAT input credit)*	*9,00,000*
(iv)	*Sales effected during the month of January, 2017 (exclusive of VAT @ 12.5%)*	*12,00,000*

(a) The above amounts are exclusive of VAT & CST.

(b) Intra-state purchases of inputs and capital goods are taxable @ 4% VAT.

(c) Input tax credit, on eligible capital goods, is available in 12 equal instalments.

Determine Input tax credit and VAT payable for the month of January, 2017. ***(4 Marks)***

Answer

(a) Computation of value of taxable services of MNO Advertising Agency for March, 2017

Sl. No.	Particulars	Amount (₹)
(i)	Selling advertisement time slot on mobile	2,00,000
(ii)	Aerial Advertisement	8,00,000
(iii)	Advertisement on bill boards	3,60,000
(iv)	Charges towards newspaper advertisements	Nil
(v)	Commission earned towards advertisement campaigns	6,40,000
(vi)	Advertisement on cover and back pages of printed books	Nil
	Value of taxable services	**20,00,000**

Note: Selling of space for advertisement in print media is covered under negative list of services under section 66D of the Finance Act, 1994 and hence, not liable to service tax. However, all other forms of advertising are thus, liable to service tax.

Further, print media *inter alia*, means book and newspaper but excludes business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes. It has been assumed that printed books are not the ones which are excluded from the definition of print media.

(b) Computation of input tax credit and net VAT payable for the month of January, 2017

Particulars	₹
Computation of input tax credit	
Total purchases of capital goods and inputs	46,00,000
Less: Purchase from unregistered dealers [Not eligible for input tax credit]	5,00,000
Inter-State purchases [Not eligible for input tax credit]	18,00,0000
Purchase of capital goods [considered separately]	9,00,000
Inputs eligible for input tax credit	14,00,000
Input tax credit on eligible inputs [VAT paid @ 4%] **[A]**	56,000
Capital goods eligible for input tax credit [₹9,00,000 x 50%]	4,50,000

Input tax credit on eligible capital goods [(₹ 4,50,000 x 4%)/12[8]] **[B]**	1,500
Total input tax credit **[A] + [B]**	**57,500**
Computation of net VAT payable	
VAT payable on sale @ 12.5% [₹ 12,00,000 x 12.5%]	1,50,000
Less: Input tax credit	57,500
Net VAT payable	**92,500**

Question 8

(a) Compute service tax liability for the following services, individually:

	Particulars	***Amount (₹)***
(i)	*Transportation of goods by vessel from a place outside India upto Customs Station of clearance in India.*	*10,00,000*
(ii)	*Speed post services provided by Delhi Post Office, where the value of each service does not exceed ₹ 5,000.*	*3,00,000*
(iii)	*Services provided by a Senior Advocate to a business entity with a turnover of ₹ 6,00,000 in the preceding financial year*	*2,00,000*
(iv)	*Transportation of passengers with accompanied belongings by a stage carriage (non-airconditioned).*	
(v)	*Services provided by a local authority, to a business entity having a turnover of ₹ 8,00,000 in the preceding financial year*	

Ignore Small Service Provider's exemption. The above services are exclusive of Service tax and applicable cess (15% inclusive of SBC & KKC). Working notes should form part of your answer. ***(5 Marks)***

(b) Rai & Co., has effected inter-state turnover of ₹ 12,00,000 inclusive of Central Sales Tax (CST), against which buyers have issued concessional 'C' Forms, for the year 2016-17.

The above turnover includes the following, which are shown separately in the invoices –

	₹
Erection expenses	*80,000*
Excise Duty	*60,000*
Packing charges	*20,000*
Outward freight (charged separately in the invoice)	*60,000*

[8] *It has been presumed that input tax credit on eligible capital goods is available in 12 equal* ***monthly*** *instalments.*

Further particulars obtained from the records of Rai & Co., for the above transactions, include:

(i) Cash discount of ₹ 20,000 has been shown in one of the invoices.

(ii) Goods invoiced in October, 2016, for ₹ 75,000, were returned in March, 2017.

(iii) Goods, invoiced and dispatched in July, 2016, valued ₹ 20,000 were rejected and received back by Rai & Co., in March, 2017.

(iv) Local Sales Tax in the State is 10%.

Determine the taxable turnover and Central Sales Tax (CST) liability of Rai & Co., for the year 2016-17.

Working notes should form part of your answer. ***(5 Marks)***

Answer

(a) (i) Transport of goods by vessel from a place outside India upto Customs Station of clearance in India is liable to service tax as the same was removed from the negative list vide Finance Act, 2016. Abatement of 70% is available under *Notification No. 26/2012 ST dated 20.06.2012,* if CENVAT credit on inputs and capital goods is not taken.

Assuming that the CENVAT credit has not been so taken, the service tax liability will be ₹ 10,00,000 x 30% x 15% = ₹ 45,000.

(ii) Exemption to services provided by Government/local authority valuing up to ₹ 5,000 is not available for speed post services provided by the Department of Posts to persons other than the Government [Section 66D of the Finance Act, 1994 read with *Notification No. 25/2012 ST dated 20.06.2012].* Assuming that in the given case, the speed post service is provided to persons other than Government, the service tax liability will be computed as under:

₹ 3,00,000 x 15% = ₹ 45,000

(iii) Legal services provided by a senior advocate to business entity with turnover up to ₹ 10,00,000 in the previous financial year are exempt from service tax vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*.

(iv) Transportation of passengers with accompanied belongings by a stage carriage had been removed from the negative list by the Finance Act, 2016 thereby making it liable to service tax.

However, simultaneously exemption was given to such transportation in a non-air conditioned stage carriage vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*.

(v) Service provided by Government or local authority to a business entity with a turnover up to ₹10,00,000 in the preceding financial year is exempt from service tax vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*.

(b) Computation of taxable turnover and CST liability of Rai & Co.

Particulars	₹	₹
Total inter-State sales (inclusive of CST)		12,00,000
Less: Erection expenses [Note-1]	80,000	
Outward freight [Note-2]	60,000	
Cash discount [Note-3]	20,000	
Goods returned [Note-4]	75,000	
Goods rejected & received back after 6 months [Note-5]	20,000	
Packing charges and Excise duty [Note-6]	Nil	2,55,000
Turnover (including CST)		9,45,000
Taxable turnover [₹ 9,45,000 × 100/102] (rounded off)		**9,26,471**
CST @ 2% [₹ 9,45,000 × 2/102] (rounded off)		**18,529**

Notes:

1. Erection expenses are deductible as they are shown separately in the invoices.
2. Outward freight is deductible as it has been charged separately in the invoice.
3. Cash discount has been excluded from the definition of sale price.
4. Goods returned are deductible as they have been returned within 6 months presuming that sales return has not been adjusted in inter-State sales.
5. Goods rejected & received back after 6 months are deductible since the period of 6 months for returns of goods is not applicable in respect of rejected goods, being a case of an un-fructified sale. It has been presumed that goods rejected have not been adjusted in inter-State sales.
6. Packing charges and excise duty are includible as they form part of sales price.
7. CST on transactions covered by valid 'C' forms is 2% or the sales-tax rate within the State, whichever is lower. Since, in this case, the State sales-tax rate is higher than 2%, the rate of CST is taken as 2%.

Question 9

(a) Logjam Services Ltd., an output service provider, has imported capital goods in October, 2016. As per the records available with it, the following information regarding payment of duty was forthcoming:

		₹
(i)	*Customs duty paid*	*8,000*
(ii)	*Countervailing duty under section 3(1) of Customs Tariff Act, 1975.*	*4,000*
(iii)	*Education Cess*	*240*
(iv)	*Secondary and Higher Education cess*	*120*
(v)	*Special CVD under section 3(5) of Customs Tariff Act, 1975*	*1,400*
(vi)	*Certification charges paid includes Service Tax @14%, KKC @ 0.5% and SBC @ 0.5%*	*1,150*

You are required to determine how much CENVAT credit can Logjam Services Ltd. avail.

(6 Marks)

(b) Equipment is imported from USA, against which the following particulars are made available:

(i) CIF value of equipment *US $ 6,000*

(ii) Air freight paid *US $1,400*

(iii) Insurance *US $ 400*

(iv)	***Particulars***	***Date***	***Rate of Duty (%)***	***Exchange rate notified by CBEC (per US $)***	***Exchange rate notified by RBI (per US $)***
	Date of Bill of entry	*20-03-2017*	*10*	*65*	*68*
	Date of entry inwards	*28-03-2017*	*15*	*70*	*71*

(v) Additional duty leviable under section 3(I) of Customs Tariff Act, 1975 is 12.5%.

(vi) Special additional duty being 'nil'.

Determine total duty payable by the importer. Provide notes where required. ***(4 Marks)***

Answer

(a) Computation of CENVAT credit that can be availed by Logjam Services Ltd.

Particulars	**₹**
Customs duty paid [Note-1]	Nil
Countervailing duty u/s 3(1) of the Customs Tariff Act, 1975 [Note-2]	4,000
Education cess and Secondary and Higher Education Cess [Note-3]	Nil
Special CVD u/s 3(5) of the Customs Tariff Act, 1975 [Note-4]	Nil
Service tax paid on certification charges [Note-5] = ₹ 1,150 × 14/115	140

KKC paid on certification charges [Note-6] = ₹ 1,150 × 0.5/115	5
SBC paid on certification charges [Note-7]	Nil
CENVAT credit that can be availed	**4,145**

Notes:

1. CENVAT credit of the basic customs duty[9] cannot be availed under rule 3(1) of the CENVAT Credit Rules, 2004.
2. CENVAT credit of CVD is available. Being capital goods purchase, 50% credit can be taken in the year of purchase and the balance 50% in the subsequent years.
3. CENVAT credit of EC and SHEC of customs is not available under rule 3(1) of the CENVAT Credit Rules, 2004.
4. CENVAT credit of special CVD is not available to an output service provider.
5. Any service used for providing an output service is an eligible input service under rule 2(l) of the CENVAT Credit Rules, 2004.
6. An output service provider is eligible to avail the credit of KKC.
7. SBC is not CENVATable.

(b) Computation of customs duty payable

Particulars	**US $**
CIF value	6,000.00
Less: Air freight	1,400.00
Less: Insurance	400.00
FOB value	4,200.00
Add: Air freight [restricted to 20% of FOB value]	840.00
Add: Insurance [Actual]	400.00
CIF value as per customs	5440.00
Add: Landing charges [1% of CIF value]	54.40
Total	5,494.40
Rate of exchange [Exchange rate notified by CBEC on the date of presentation of bill of entry i.e. 20.03.2017]	₹ 65
Particulars	**₹**
Assessable value (in rupees) = US$ 5,494.40 × ₹ 65	3,57,136

[9] *Customs duty has been presumed to be the basic customs duty.*

Add: Basic custom duty @ 15% [rounded off]	53,570
[Relevant date for determination of the rate of import duty is date of presentation of bill of entry or of entry inwards, whichever is later]	
Total	410,706
Add: CVD @12.5% [rounded off]	51,338
Add: Education cess @ 2% and Secondary and Higher Education cess @ 1% [3% of (BCD + CVD)] = 3% of (₹ 53,570+ ₹ 51,338) [rounded off]	3,147
Total customs duty payable (₹ 53,570 + ₹ 51,338 + ₹ 3,147)	**1,08,055**

Question 10

(a) You are required to determine the point of taxation for the following service:

(i) ABC & Co., a firm of Chartered Accountants, renders service to M/s. ST & Sons in the month of December, 2016, which gets completed on 31st December, 2016. It is billed on 5th January, 2017, while the payment for the same is received on 2nd January, 2017.

(ii) Services rendered by Rajesh became taxable for the first time on 01-04-2016. Explain briefly the taxability of the following:

(a) Service was rendered on 25-03-2016 and invoice was issued and payment was received on 01-04-2016.

(b) Payment was received on 30-03-2016 and invoice was issued on 06-04-2016. No services have been rendered so far. ***(5 Marks)***

(b) Agarwal & Co. Ltd., are the manufacturers of a consumer product under the brand name of "AXE SHAMPOO", which is covered under section 4A of the Central Excise Act, 1944. Retail Sale Price (RSP) printed on the bottle is ₹ 120. Abatement as notified by the Government is 30% on the RSP.

Following information is furnished with respect to clearances of "AXE SHAMPOO" in the month of December, 2016 -

(i) Dispatches are made in cartons containing 24 bottles.

(ii) 100 cartons were cleared to wholesalers but was invoiced for 23 bottles a carton.

(iii) 40 cartons were cleared to retailers and 1 bottle per carton was additionally given as free.

(iv) 2 cartons were given away as free samples without RSP being printed.

Determine the assessable value and excise duty payable on the above transactions, rate of excise duty being 12.5%.

Provide explanations where required. ***(5 Marks)***

Answer

(a) (i) As per Rule 3 of the Point of Taxation Rules, 2011[10], in case invoice has been issued within 30 days of completion of service [31st December, 2016], point of taxation is:

(I) date of issuance of invoice [5th January, 2017]

or

(II) date of receipt of payment [2nd January, 2017],

whichever is earlier.

Therefore, the point of taxation is **2nd January, 2017**.

(ii) As per Rule 5 of the Point of Taxation Rules, 2011, where a service is taxed for the first time, no tax shall be payable:

(I) to the extent invoice is issued and payment received against such invoice before such service became taxable.

(II) if payment is received before the service becomes taxable and invoice is issued within 14 days of the date when the service is taxed for the first time.

(a) Service is taxable as it does not fall within the purview of any of the cases specified above.

(b) Service is not taxable as it is covered in Case-II specified above.

(b) As per section 4A of Central Excise Act, 1944, assessable value is RSP less abatement.

Particulars	**₹**
RSP printed on the bottle	120
Less: **Abatement @ 30% of RSP** [30% of ₹ 120]	36
Assessable Value per bottle for purpose of excise duty	84

Computation of assessable value and excise duty payable on various transactions

Particulars	**₹**	**₹**
Assessable Value of 100 cartons [Note-1] = 100 cartons × 24 bottles × ₹ 84		2,01,600
Assessable Value of 40 cartons = 40 cartons × 24 bottles × ₹ 84	80,640	

[10] *It has been assumed that ABC & Co. is not eligible to avail the option to pay service tax on taxable services upto ₹ 50 lakh on receipt basis in terms of rule 6 of the Service Tax Rules, 1994 or it has not availed the said option.*

Assessable Value of 1 bottle given as free with each carton [Note-1] = 1 bottle × 40 cartons x ₹ 84	3,360	84,000
Assessable Value of 2 cartons given as free samples without printing RSP on them [Note-2] = 2 cartons × 24 bottles × ₹ 84		4,032
Total assessable value		**2,89,632**
Excise duty @ 12.5% (rounded off)		**36,204**

Notes:

1. The quantity discounts offered to the buyer are not allowed in case of RSP based valuation.
2. Free samples are valued by taking into consideration the deemed value under section 4A.

Question 11

(a) Discuss with reference to the provisions of Finance Act, 1994, whether the undermentioned transactions constitute consideration for service.

(i) Fines and penalties imposed against violation of law.

(ii) X provides services to Y. However, Y's debtor makes payment to X on the instructions of Y.

(iii) Security deposit forfeited for damages caused by the service receiver in the course of receiving the service.

(iv) Grant given to a researcher to carry out research of his/her choice.

(v) Casual worker is given daily wages in the course of rendering services to the person engaging him almost continuously. ***(5 Marks)***

(b) (i) What is the relevant date for determining rate of duty and tariff valuation of export of goods as per section 16 of the Customs Act, 1962. ***(2 Marks)***

(ii) Arun & Co., of Tamil Nadu sends goods to its consignment agent, Monogram Ltd., at Mumbai, for sale of such goods in the State of Maharashtra. Commercial tax authorities are insisting Arun & Co., to pay CST in Tamil Nadu. Determine the validity of the claim so made by the tax authorities in Tamil Nadu. There is no pre-existing agreement for sale between the two. ***(3 Marks)***

Answer

(a) (i) No. Since fines and penalties are legal consequences of a person's actions and not a consideration for any activity, fines and penalties imposed against violation of law do not constitute consideration for service.

(ii) Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. Since in the given case, payment for the service is made by a debtor of service receiver Y, on the instructions of Y, the payment will be treated as consideration for service provided by X to Y.

(iii) Yes. Since security deposit has been forfeited for damages caused by the service receiver in the course of receiving the service and not on account of any accidental damages due to unforeseen actions un-relatable to provisions of service, it would constitute a consideration for provision of service in terms of rule 6(2) of the Service Tax (Determination of Value) Rules, 2006.

(iv) No. The grants given for a research where the researcher is under no obligation to carry out a particular research is not a consideration.

(v) Services provided by a casual worker to employer who gives wages on daily basis are services provided in the course of employment and are thus, not liable to service tax in terms of section 65B(44)(b) of the Finance Act, 1994.

As per clause (a) of Explanation to Section 67 of the Finance Act, 1994, consideration includes any amount that is payable for the taxable services provided or to be provided. Therefore, since there is no service, there is no consideration under Finance Act, 1994 in this case.

(b) (i) As per section 16 of the Customs Act, 1962, the relevant date for determining rate of duty and tariff valuation of export of goods-

(a) in case of goods entered for export is the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation.

(b) in case of any other goods is the date of payment of duty

(ii) As per section 6A of the Central Sales Tax Act, 1956, where a dealer sends the goods outside the State to his other place of business (branch)/his agent/principal in such other State, such movement of goods is an inter-State stock transfer and is not liable to central sales tax provided the following conditions are fulfilled:

(i) There was no pre-existing agreement with the branch/agent/principal for the sale of the goods so transferred.

(ii) Dealer obtains Form F from its branch office/agent/principal and furnishes it to the assessing authority.

In the given case, since there is no pre-existing agreement for sale between the dealer - Arun & Co and its consignment agent, Monogram Ltd., the goods sent by the dealer to its agent is a stock transfer [not being liable to CST] provided that such dealer has obtained Form F from the agent and furnished the same to the assessing authority. **In such a case, the claim made by the tax authorities to pay CST in Tamil Nadu will not be valid**.

Question 12

(a) (i) PQR Ltd., is registered as an input service distributor. Company needs your advice regarding filing of returns under service tax law as input service distributor.

(ii) Bring out the salient points in respect of fee leviable on late filing of service tax returns.

(iii) Determine the late fee payable by PQR Ltd., where the filing of service tax return has been delayed by 45 days and the liability towards service tax being ₹ 50,000.

(5 Marks)

OR

(a) Sophomore of USA intends to start business as an aggregator in India. He wants to understand his obligations under service tax law as an aggregator. He requires your advice on how he has to go about in discharging the tax liability as an aggregator, while he continues to reside in USA. ***(5 Marks)***

(b) (i) Raghavan, a service provider, has taken CENVAT credit based on the invoice made available to him. He has received the invoice on 10-04-2016 and has made payment against the invoice on 01-11-2016. Explain the consequences of CENVAT credit that he has taken on 10-04-2016.

(ii) Raghavan has received invoices but they have remained unaccounted for more than a year. He intends to take CENVAT credit while accounting for it now. Advise him on his decision. ***(5 Marks)***

Answer

(a) (i) PQR Ltd., an input service distributor, is required to furnish a half yearly return in Form ST-3 giving details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise. Due dates for filing return are as under:

Half year	Due date
1st April to 30th September	31st October
1st October to 31st March	30th April

(ii) In terms of rule 7C of Service Tax Rules, 1994, the salient points in respect of fee leviable on late filing of service tax returns are as under:-

1. Late fee leviable is ₹ 500 in case of delay of 15 days from the date prescribed for submission of the return.
2. Late fee leviable is ₹ 1,000 in case of delay beyond 15 days but not later than 30 days from the date prescribed for submission of the return.
3. Late fee leviable is ₹ 1,000 plus ₹ 100 for every day from the 31st day till the date of furnishing the said return in case of delay beyond 30 days from the

date prescribed for submission of the return.

4. The maximum late fees payable for delayed submission of return is ₹ 20,000.

5. Where service tax payable is nil, Central Excise Officer may reduce/waive the late fee, if he is satisfied that there is sufficient reason for not filling the return.

(iii) Late fee is lower of:

(i) ₹ 1,000 + ₹ 1,500 (₹ 100 × 15 days) = ₹ 2,500

Or

(ii) ₹ 20,000

Thus, late fee leviable is ₹ 2,500.

Answer to alternative Question 12(a)

(a) In relation to services provided by a person involving an aggregator in any manner, such aggregator is the person liable to pay service tax.

However, since in the given case, the aggregator – Sophomore - continues to reside outside India (USA), any person representing him for any purpose in India will be liable for paying service tax.

Further, if he does not have a representative for any purpose in India, he will have to appoint a person in India for the purpose of paying service tax; and such person will be liable for paying service tax.

(b) **(i)** As per rule 4(7) of CENVAT Credit Rules, 2004, the CENVAT credit in respect of input service is allowed on the receipt of invoice when service tax is payable under forward charge.

If value of input service and service tax is not paid within 3 months of the date of invoice, the credit is to be reversed. However, this credit can be retaken once the payment is made.

In the present case, since Raghavan has not made payment against the invoice within 3 months of the date of invoice, the credit availed by him is to be reversed. The date of receipt of invoice [10.04.2016] has been assumed to be the date of issue of invoice.

However, he can re-avail the credit on 01.11.2016 when he makes the payment against the invoice (both value of input service plus the service tax).

Note: *The question has been answered by assuming that invoice relates to an input service and service tax is payable under forward charge.*

(ii) The advice on Raghavan's decision of availing CENVAT credit on invoices older than one year will be as under:

A. If the invoices received relate to inputs and input services, CENVAT credit cannot be taken, since the time limit for taking CENVAT credit on inputs/input services is one year from the date of issue of the invoice in terms of rule 4 of CENVAT Credit Rules, 2004.

Note: *The above answer is based on the assumption that input services are the ones other than the rights assigned to use any natural resource.*

B. If the invoices received relate to capital goods, CENVAT credit can be taken as the time limit of one year for taking CENVAT credit does not apply in case of capital goods.