

The Suggested Answers for Paper – 5: Income-tax and Central Sales Tax are based on the provisions applicable for A.Y.2008-09, which is the assessment year relevant for May 2008 examination.

PAPER – 5 : INCOME TAX AND CENTRAL SALES TAX

Answer all questions

Question 1

- (a) Rajat is a Chartered Accountant in practice. He maintains his accounts on cash basis. He is a Resident and ordinarily resident in India. His profit and loss account for the year ended March 31, 2008 reads as follows:

Expenditure	Rs.	Income	Rs.
Salary to staff	5,25,000	Fees earned:	
Stipend to articled assistants	18,000	Audit	6,65,800
Incentive to articled assistants	5,000	Taxation services	4,68,600
Office rent	24,000	Consultancy	<u>3,82,000</u>
Printing and stationery	6,600	Dividend on shares of Indian companies (gross)	15,16,400
Meeting, seminar and conference	38,600	Income from Unit Trust of India	9,635
Repairs, maintenance and petrol of car	22,400	Profit on sale of shares	6,600
Subscription and periodicals	15,000	Honorarium received from various institutions for valuation of answer papers	15,620
Postage, telegram and fax	32,500	Rent received from residential flat let out	16,350
Depreciation	29,500		84,000
Travelling expenses	55,000		
Municipal tax paid in respect of house property	1,000		
Net profit	8,76,005		
	<u>16,48,605</u>		<u>16,48,605</u>

Other information:

- (i) The total travelling expenses incurred on foreign tour was Rs.20,000 which was within the RBI norms.

- (ii) Incentive to articled assistants represent amount paid to two articled assistants for passing PE-II Examination at first attempt.
- (iii) Repairs and maintenance of car includes Rs.1,600 for the period from 1.10.2007 to 30.09.2008.
- (iv) Salary include Rs.30,000 to a computer specialist in cash for assisting Mr. Rajat in one professional assignment.
- (v) Rs.1,500, interest on loan paid to LIC on the security of his Life Insurance Policy and utilised for repair of computer, has been debited to the drawing account of Mr. Rajat.
- (vi) Birthday gifts received by his minor son include cash Rs.30,000, which was deposited with a nationalised bank. Interest accrued upto 31.3.2008 amounted to Rs.1,500.
- (vii) Medical Insurance Premium on the health of:

	Amount	Mode of payment
Self	10,000	By Cheque
Dependent brother	5,000	By Cheque
Major son dependent on him	3,000	By Cash
Minor married daughter	2,000	By Cheque
Wife dependent on assessee	6,000	By Cheque

- (viii) Shares sold were held for 10 months before sale.
- (ix) Rajat paid life membership subscription of Rs.1,000 to Chartered Accountants Benevolent Fund. The amount was debited to his drawings account. The Chartered Accountants Benevolent Fund is an approved fund under section 80G of Income-tax, 1961.

Compute the total income and tax payable of Rajat for the Assessment year 2008-09

(20 Marks)

- (b) Aarav converts his plot of land purchased in July, 2001 for Rs.80,000 into stock-in-trade on 31st March, 2007. The fair market value as on 31.3.2007 was Rs.1,90,000. The stock-in-trade was sold for Rs.2,25,000 in the month of January, 2008.

Find out the taxable income, if any, and if so under which 'head of income' and for which Assessment Year?

Cost Inflation Index:

F.Y. 2001 – 2002	- 426
F.Y. 2006 – 2007	- 519
F.Y. 2007 – 2008	- 551

(5 Marks)

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- (c) Vinod is a person carrying on profession as film artist. His gross receipts from profession are as under:

	Rs.
Financial year 2005-06	1,15,000
Financial year 2006-07	1,80,000
Financial year 2007-08	2,10,000

What is his obligation regarding maintenance of books of accounts for each Assessment Year under section 44AA of Income-tax Act, 1961? (5 Marks)

Answer

- (a) Computation of Total Income of Mr. Rajat for Assessment Year 2008-09.

Particulars	Working Note Nos.	Amount in Rs.
Income from House Property	1	58,100
Profit and gains of Business or Profession	2	7,73,300
Short-term capital gains	3	15,620
Income from other sources	4	<u>16,350</u>
Gross Total Income		8,63,370
Less: Deduction under Chapter VI-A	5	<u>15,500</u>
Total Income		<u>8,47,870</u>
Tax on total income		
Total Income		8,47,870
Less: Short-term capital gains (See Note 10 below)		<u>15,620</u>
Normal Income		<u>8,32,250</u>
Tax on normal income		1,98,675
Tax on short-term capital gains @10%		<u>1,562</u>
		2,00,237
Add: Education cess @ 2%		4,005
Secondary and Higher education cess @ 1%		<u>2,002</u>
Total tax liability		<u>2,06,244</u>
Total tax liability (rounded off)		2,06,240

Notes -

(1) Income from House Property		
Gross annual value	84,000	
Less: Municipal taxes paid by owner	<u>1,000</u>	
Net Annual Value (NAV)	83,000	
Less: Deduction under section 24 @ 30% of NAV	<u>24,900</u>	58,100

Rent received has been taken as the Gross Annual Value in the absence of other information relating to Municipal Value, Fair Rent and Standard Rent.

(2) Income under the head "Profits & Gains of Business or Profession"		
Net profit as per Profit & Loss Account		8,76,005
Add: Expenses debited to the Profit & Loss Account but not allowable		
(i) Salary paid to computer specialist in cash disallowed under section 40A(3), since such cash payment exceeds Rs.20,000	30,000	
(ii) Municipal Taxes paid in respect of residential flat let out	<u>1,000</u>	<u>31,000</u>
		9,07,005
Less: Expenses allowable but not debited to profit and loss account		
Interest paid on loan taken from LIC used for repair of computer		<u>1,500</u>
		9,05,505
Less: Income credited to Profit & Loss Account but not taxable under this head:		
(i) Dividend on shares of Indian companies	9,635	
(ii) Income from UTI	6,600	
(iii) Profit on sale of shares	15,620	
(iv) Honorarium for valuation of answer papers	16,350	
(v) Rent received from letting out of residential flat	<u>84,000</u>	<u>1,32,205</u>
		<u>7,73,300</u>

(3)	Capital gains:		
	Short term capital gain on sale of shares		15,620
(4)	Income from other sources:		
	Dividend on shares of Indian companies	9,635	
	Less: Exempt under section 10(34)	<u>9,635</u>	Nil
	Income from UTI	6,600	
	Less: Exempt under section 10(35)	<u>6,600</u>	Nil
	Honorarium for valuation of answer papers	<u>16,350</u>	16,350
(5)	Deduction under Chapter VI-A:		
	Deduction under section 80D (Medical Insurance Premium)		
	Policy holder	Amount of Premium (Rs.)	Amt. eligible for deduction (Rs.)
	Self	10,000	10,000
	Dependent brother	5,000	Nil
	Major son dependent on him	3,000	Nil
	Minor married daughter	2,000	Nil
	Wife dependent on assessee	<u>6,000</u>	<u>6,000</u>
			<u>16,000</u>
	Amount of deduction is restricted to Rs.15,000		15,000
	Deduction under section 80G (Donation)		
	Donation to CA Benevolent Fund (50% of Rs.1,000)		<u>500</u>
	Total deduction under Chapter VI-A		<u>15,500</u>

Note – Premium paid to insure the health of brother is not eligible for deduction under section 80D. Premium paid to insure the health of son is not eligible for deduction since payment is made in cash. Premium paid to insure the health of minor married daughter is not eligible for deduction she is not dependent on Mr.Rajat.

- (6) Income of minor child:
- | | | |
|--|--------------|-----|
| Interest accrued on bank deposit | 1,500 | |
| Less: Exempt under section 10(32) @ Rs.1,500 per child | <u>1,500</u> | Nil |
- Since the value of birthday gifts received by the minor son does not exceed Rs.50,000, the same is not taxable under section 56(2)(vi).
- (7) Rs.20,000 expended on foreign tour is allowable as deduction assuming that it was incurred in connection with his professional work. Therefore, it requires no further treatment.
- (8) Incentive to articled assistants passing PE-II examination in their first attempt is deductible under section 37(1).
- (9) Repairs and maintenance paid in advance for the period 1.4.2008 to 30.9.2008 i.e. for 6 months amounting to Rs.800 will be allowed since Mr. Rajat is following the cash system of accounting.
- (10) It is assumed that the transaction of sale of shares has been entered into in a recognized stock exchange and that securities transaction tax has been paid on such sale. Since the period of holding of these shares is less than 12 months, the profit arising therefrom is a short-term capital gain chargeable to tax at 10% under section 111A.
- (b) Conversion of a capital asset into stock-in-trade is a transfer within the meaning of section 2(47) in the previous year in which the asset is so converted. However, the capital gains will be charged to tax only in the year in which the stock-in-trade is sold.

The cost inflation index of the financial year in which the conversion took place should be considered for computing indexed cost of acquisition. Further, the fair market value on the date of conversion would be deemed to be the full value of consideration for transfer of the asset as per section 45(2). The sale price less the fair market value on the date of conversion would be treated as the business income of the year in which the stock-in-trade is sold.

Therefore, in this problem, both capital gains and business income would be charged to tax in the A.Y. 2008-09.

Particulars	Rs.
Capital Gains	
Full value of consideration (Fair market value on the date of conversion)	1,90,000
Less: Expenses on transfer	Nil
Net sale consideration	<u>1,90,000</u>
Less: Indexed cost of acquisition [Rs.80,000 x 519]	<u>426</u>
Long-term capital gain	<u>97,465</u>
	<u>92,535</u>

Profits & Gains of Business or Profession	
Sale price of stock-in-trade	2,25,000
Less: Fair market value on the date of conversion	1,90,000
	35,000

Computation of taxable income of Mr. Aarav for A.Y.2008-09

Particulars	Rs.
Profits and gains from business or profession	35,000
Long term capital gains	<u>92,535</u>
	<u>1,27,535</u>

- (c) Section 44AA(1) requires every person carrying on any profession, notified by the Board in the Official Gazette (in addition to the professions already specified therein), to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act.

Thus, a person carrying on a specified profession shall be required to maintain specified books of accounts -

- (i) if his gross receipts in all the three years immediately preceding the relevant previous year has exceeded Rs.1,50,000; or
- (ii) if it is a new profession which is setup in the relevant previous year, it is likely to exceed Rs.1,50,000 in that previous year.

In the present case, Vinod is a person carrying on profession as film artist, which is a notified profession. Since his gross receipts have not exceeded Rs.1,50,000 in financial year 2005-06, the requirement under section 44AA to compulsorily maintain the prescribed books of account is not applicable to him.

Question 2 (First Alternative)

- (a) Explain the orders appealable to Tribunal under Section 253 of the Income-tax Act.
- (b) Explain the computation of capital gain in case of depreciable asset under section 50.

(6 x 2 = 12 Marks)

Answer

- (a) Section 253(1) provides that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

Order passed by	Section	Particulars
1. Assessing Officer	115VZC(1)	Power of Assessing Officer to exclude a tonnage tax company from the tonnage tax scheme if such company is a party to any transaction or arrangement which amounts to an abuse of such scheme.
2. Commissioner (Appeals)	154	Order rectifying a mistake
	250	Order of the Commissioner (Appeals) disposing of the appeal
	271	Order imposing penalty for failure to furnish return, comply with notices, concealment of income etc.
	271A	Order imposing penalty for failure to keep, maintain or retain books of account, documents etc.
3. Commissioner	12AA	Order refusing/canceling registration of trust or institution
	80G(5)(vi)	Refusal to grant approval to the Institutions or Fund
	263	Revision of erroneous order passed by Assessing Officer
	271	Order imposing penalty for failure to furnish return, comply with notices, concealment of income etc.
	272A	Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.
	154	Amending the order passed under section 263.

4. Chief Commissioner or Director General or Director 272A Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.

Section 253(2) provides that the Commissioner may, if he objects to any order passed by the Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

- (b) Computation of capital gains in case of a depreciable asset

Section 50 provides for the computation of capital gains in case of depreciable assets. Where the full value of consideration received or accruing as a result of the transfer of the asset plus the full value of such consideration for the transfer of any other capital asset falling within the block of assets during the previous year, exceeds the aggregate of the following amounts, namely:

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
- (ii) WDV of the block of assets at the beginning of the previous year;
- (iii) the actual cost of any assets falling within the block of assets acquired during the previous year,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

Where all assets in a block are transferred during the previous year, the block itself will cease to exist. In such a situation, the difference between the sale value of the assets and the WDV of the block of assets at the beginning of the previous year together with the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year will be deemed to be the capital gains arising from the transfer of short term capital assets.

Question 2 (Second Alternative)

- (a) What do you understand by the reference to Valuation Officer under section 55A of the Income-tax Act, 1961?
- (b) Discuss the cross transfers in the context of Income-tax. (6 x 2 = 12 Marks)

Answer

- (a) Section 55A provides that the Assessing Officer may refer the valuation of a capital asset to a Valuation Officer in the following circumstances with a view to ascertaining the fair market value of the capital asset for the purposes of capital gains -
 - (i) In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of the opinion that the value so claimed is less than its fair market value.
 - (ii) If the Assessing Officer is of the opinion that the fair market value of the asset exceeds

the value of the asset as claimed by the assessee by more than 15% of the value of asset as claimed or by more than Rs.25,000 of the value of the asset as claimed by the assessee.

- (iii) The Assessing Officer is of the opinion that, having regard to the nature of asset and other relevant circumstances, it is necessary to make the reference.

Where any such reference is made as per this section, the provisions of section 16A of the Wealth-tax Act shall be applicable in relation to such reference as they apply in relation to a reference made by the Assessing Officer under section 16A of that Act.

- (b) In the case of cross transfers also (e.g. A making gift of Rs.50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth Rs.50,000 owned by him), the income from the assets transferred would be assessed in the hands of the deemed transferor, if the transfers are so intimately connected as to form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise. Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the clubbing provisions, showing that such transfers constitutes consideration for the other.

The Supreme Court has, in CIT v Keshavji Morarji [1967] 66 ITR 142, observed that if two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. Accordingly, the income arising to Mrs. B from the house property should be included in the total income of B and the dividend from shares transferred to A's minor son would be taxable in the hands of A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of the income yielding assets, so as to reduce their burden of taxation.

Question 3

- (a) Choose the correct answer with reference to the provisions of the Income-tax Act, 1961 :
- (i) In respect of a resident assessee, who is of the age of 65 years or more at any time during the previous year relevant to the Assessment Year 2008-09 -
- Rebate of tax payable subject to a maximum of Rs.20,000
 - Higher basic exemption of Rs.1,50,000
 - Higher basic exemption of Rs.1,95,000
 - Higher basic exemption of Rs.1,35,000.
- (ii) Income accruing in Japan and received there is taxable in India in the case of -
- Resident and ordinarily resident only
 - Both resident and ordinarily resident and resident but not ordinarily resident
 - Both resident and non-resident
 - Non-resident

- (iii) For an employee in receipt of hostel expenditure allowance for his three children, the maximum annual allowance exempt under section 10(14) is -
- (a) Rs.10,800
 - (b) Rs.7,200
 - (c) Rs.3,600
 - (d) Rs.9,600
- (iv) The due date for filing of return for an individual assessee who is not required to get his books of accounts audited under section 44AB for Assessment Year 2008-09 is
- (a) 31st July, 2008
 - (b) 30th September, 2008
 - (c) 31st October, 2008
 - (d) 30th November, 2008
- (v) Under section 44AE, presumptive taxation is applicable at a particular rate provided the assessee is the owner of a maximum of certain number of goods carriages. The rate per month or part of the month and maximum number specified under the section are -
- (a) Rs.3,500 for a heavy goods carriage and Rs.3,150 for other goods carriages for an assessee owning not more than 10 goods carriages at any time during the year
 - (b) Rs.3,500 per carriage for an assessee owning not more than 10 goods carriages at the end of the previous year
 - (c) Rs.3,500 for a heavy goods carriage and Rs.3,150 for other goods carriages for an assessee owning not more than 12 goods carriages at the end of the previous year
 - (d) Rs.2,150 per carriage for an assessee owning not more than 10 goods carriages at the end of the previous year.
- (vi) Rakesh received Rs.70,000 from his friend on the occasion of his birthday.
- (a) The entire amount of Rs.70,000 is taxable
 - (b) Rs.25,000 is taxable
 - (c) The entire amount is exempt
 - (d) None of the above.
- (vii) Income arising to a minor married daughter is
- (a) to be assessed in the hands of the minor married daughter
 - (b) to be clubbed with the income of that parent whose total income, before including minor's income, is higher

- (c) completely exempt from tax
 (d) to be clubbed with the income of her husband.
- (viii) Mr. B incurred short-term capital loss of Rs.10,000 on sale of shares through the National Stock Exchange. Such loss can be set-off -
 (a) Only against short-term capital gains
 (b) Against both short-term capital gains and long-term capital gains
 (c) Against any head of income
 (d) None of the above.
- (ix) Rs.1 lakh is the maximum qualifying limit for deduction under-
 (a) section 80C alone
 (b) section 80C and 80CCC
 (c) section 80C, 80CCC and 80CCD
 (d) section 88.
- (x) A charitable or religious institution is required to file an application for registration -
 (a) within 1 year from its creation
 (b) within 30 days from its creation
 (c) within the financial year of its creation
 (d) none of the above (10 x 1 = 10 Marks)
- (b) State whether True/False with proper reasons of the following statements with regard to provisions of Income-tax Act, 1961:
 (i) Pension received by recipient of gallantry awards are exempt from income-tax.
 (ii) Surcharge of 10% on income-tax is payable by an individual where the total income exceeds Rs.7,50,000.
 (iii) Zero Coupon Bond means a bond on which no payment and benefits are received or receivable before maturity or redemption.
 (iv) Mr. A, a member of a HUF, received Rs.10,000 as his share from the income of the HUF. The same is to be included in his chargeable income.
 (v) Subscription to notified bonds of NABARD would qualify for deduction under section 80C. (5 x 1 = 5 Marks)

Answer

- (a) (i) (c) Higher basic exemption of Rs.1,95,000
 (ii) (a) Resident and ordinarily resident only
 (iii) (b) Rs.7,200

- (iv) (a) 31st July, 2008
 - (v) (a) Rs.3,500 for a heavy goods carriage and Rs.3,150 for other goods carriages for an assessee owning not more than 10 goods carriages at any time during the year.
 - (vi) (a) The entire amount of Rs.70,000 is taxable.
 - (vii) (b) to be clubbed with the income of that parent whose total income, before including the minor's income, is higher.
 - (viii) (b) against both short-term capital gains and long-term capital gains
 - (ix) (c) Section 80C, 80CCC and 80CCD
 - (x) (d) none of the above.
- (b) (i) True - Section 10(18) exempts any income by way of pension received by individual who has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government, may, by notification in the Official Gazette, specify in this behalf.
- (ii) False - Surcharge of 10% on income-tax is payable by an individual where his total income exceeds Rs.10,00,000.
- (iii) True - As per section 2(48) , 'Zero Coupon Bond' means a bond issued by any infrastructure capital company or infrastructure capital fund or a public sector company on or after 1st June 2005, in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and which the Central Government may notify in this behalf.
- (iv) False - Section 10(2) exempts any sum received by an individual as a member of a HUF where such sum has been paid out of the income of the family. Therefore, Rs.10,000 should not be included in Mr.A's chargeable income.
- (v) True - Section 80C(2) has been amended to provide that the subscription to such bonds issued by NABARD (as the Central Govt. may notify in the Official Gazette) would qualify for deduction under section 80C w.e.f. A.Y. 2008-09.

Question 4

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

- (a) Explain defective return under section 139(9).
- (b) What do you understand by "Composite Rent"? What is the tax treatment of Composite Rent under the Income-tax Act, 1961?
- (c) Explain the term "Business Connection" under section 9(1).
- (d) Deduction from Gross Total Income under section 80RRB. (3 x 6 =18 Marks)

Answer

- (a) As per Explanation to section 139(9), a return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:-
- (1) The annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in.
 - (2) The return of income is accompanied by the following, namely:
 - (i) a statement showing the computation of the tax payable on the basis of the return;
 - (ii) the report of the audit referred to in section 44AB or if such report has already been furnished, a copy of such report along with the proof of furnishing such report;
 - (iii) the proof regarding the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid. However, the return will not be regarded as defective if (a) a certificate of tax deducted or collected was not furnished under section 203 or under section 206C to the person furnishing his return of income, (b) such certificate is produced within a period of 2 years specified under section 155(14);
 - (iv) Where regular books of account are maintained by an assessee -
 - (a) Copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet,
 - (b) In the case of proprietary business or profession, the personal account of proprietor; in case of firm, association of persons, body of individuals, personal account of partners or members; and in case of a partner or member of a firm, association of persons or body of individuals, also his personal account in the firm, association of persons or body of individuals;
 - (v) Where the accounts of the assessee have been audited, copies of the audited profit and loss account and balance sheet and the auditor's report;
 - (vi) Where the cost accounts of an assessee have been audited under section 233B of the Companies Act, 1956, the return shall be accompanied by the report under that section;
 - (vii) Where regular books of account are not maintained by the assessee, a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, as also of the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of intimation or within such further extended time as Assessing Officer may, in his discretion, allow.

(b) Meaning and tax treatment of composite rent

(i) Meaning of Composite Rent

The owner of a property may sometimes receive rent in respect of building as well as:

- (1) Other assets like say, furniture, plant and machinery.
- (2) For different services provided in the building, for e.g.
 - (a) Lifts;
 - (b) Security;
 - (c) Power backup;

The amount so received is known as "Composite Rent".

(ii) Tax treatment of composite rent

- (1) Where composite rent includes rent of building and charges for different services (lifts, security etc.), the composite rent has to be split up in the following manner -
 - (a) The sum attributable to use of property is to be assessed under section 22 as income from house property;
 - (b) The sum attributable to use of services is to be charged to tax under the head "Profit and gains of business or profession" or under the head "Income from other sources."
- (2) Where composite rent is received from letting out of building and other assets (like furniture) and the two lettings are not separable -
 - (a) If the letting out of building and other assets are not separable i.e. the other party does not accept letting out of buildings without other assets, then the rent is taxable either as business income or income from other sources;
 - (b) This is applicable even if sum receivable for the two lettings is fixed separately.
- (3) Where composite rent is received from letting out of buildings and other assets and the two lettings are separable -
 - (a) If building is let out along with other assets, but the two lettings are separable i.e. letting out of one is acceptable to the other party without letting out of the other, then income from letting out of building is taxable under "Income from house property";

- (b) Income from letting out of other assets is taxable as business income or income from other sources;
 - (c) This is applicable even if a composite rent is received by the assessee from his tenant for the two lettings.
- (c) Business Connection [Explanation 2 to section 9(1)]
- (1) 'Business Connection' shall include any business activity carried out through a person acting on behalf of the non-resident.
 - (2) He must have an authority which is habitually exercised in India to conclude contracts on behalf of the non-resident. However, if his activities are limited to the purchase of goods or merchandise for the non-resident, this provision will not apply.
 - (3) Where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, a business connection is established.
 - (4) Business connection is also established where he habitually secures orders in India, mainly or wholly for the non-resident. Further, there may be situations when other non-residents control the above-mentioned non-resident. Secondly, this non-resident may also control other non-residents. Thirdly, all other non-residents may be subject to the same common control, as that of the non-resident. In all the three situations, business connection is established where a person habitually secures orders in India, mainly or wholly for such non-residents.

Exception

"Business Connection", however, shall not be held to be established in cases where the non-resident carries on business through a broker, general commission agent or any other agent having an independent status, if such a person is acting in the ordinary course of his business.

A broker, general commission agent or any other agent shall be deemed to have an independent status where he does not work mainly or wholly for the non-resident. He will, however, not be considered to have an independent status in the three situations explained in (4) above, where he is employed by such a non resident.

Where a business is carried on in India through a person referred to in (2), (3) or (4) mentioned above, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

- (d) Deduction from Gross Total Income under section 80RRB
- (1) This section allows deduction to a patentee, being an individual resident in India who is in receipt of income by way of royalty of a patent registered on or after 1.04.2003, up to an amount of Rs.3 lakhs;
 - (2) This deduction shall be available only to a resident individual who is registered as the true and first inventor in respect of an invention under the Patents Act, 1970, including the co-owner of the patent;

- (3) This exemption shall be restricted to the royalty income including consideration for transfer of rights in the patent or for providing information for working or use thereof in India;
- (4) The exemption shall not be available in respect of any consideration for sale of product manufactured with the use of the patented process or patented article for commercial use;
- (5) In respect of any such income which is earned from sources outside India, the deduction shall be restricted to such sum as is brought to India in convertible foreign exchange within a period of 6 months from the end of the previous year in which the income is earned or such extended period as is allowed by the competent authority. For claiming this deduction, the assessee shall be required to furnish a certificate in the prescribed form signed by the prescribed authority, alongwith the return of income;
- (6) No deduction in respect of such income will be allowed under any other provision of the Income-tax Act.

Question 5

- (a) State, with brief reasons, whether the following statements are true or false as per the provisions of Central Sales-tax Act, 1956:
 - (i) Sale includes mortgage or hypothecation of or charge or pledge on goods.
 - (ii) Prosecution on the same facts shall lie under section 10 if a penalty is imposed under section 10A.
 - (iii) Form J is obtained by the selling dealer from his customers in SEZ.
 - (iv) Payment of sales-tax under both laws is a condition precedent for application of refund of local sales-tax.
 - (v) Unmanufactured tobacco and tobacco refuse, cigars and cheroots of tobacco, cigarettes and cigarillos of tobacco and other manufactured tobacco are covered under section 14 as declared goods and can avail concessional tax treatment.

(5 x 2 = 10 Marks)
- (b) Fill in the blanks in the light of the provisions of Central Sales-tax Act:
 - (i) Aviation Turbine fuel sold to aircraft with a maximum take off mass of less than 40,000 kg. operated by scheduled airlines is(Declared goods/Undeclared goods).
 - (ii) As per section 6(2), no CST exemption would be available in respect of subsequent sale to.....(Government/Registered Dealers).
 - (iii) Ram of Indore sells goods after he received the payment from Shyam of Mumbai. Shyam of Mumbai gets a cash discount. Such cash discount shall be.....(deducted/not deducted) from the sale price.

- (iv) Indian Airlines purchases Aviation Turbine Fuel for the purpose of its London flight. Such purchase.....(shall/shall not) be the sale in the course of export of goods.
- (v) Erection and commissioning(are/are not) works contract.

(5 x 1 = 5 Marks)

Answer

- (a) (i) False - As per the definition of sale under section 2(g) of the Central Sales-tax Act, 1956, sale does not include a mortgage or hypothecation of or a charge or pledge on goods.
 - (ii) False - No prosecution shall be instituted under section 10 in respect of the same facts if penalty is imposed under section 10A. The levy of penalty is in lieu of prosecution of offence and therefore, prosecution cannot be initiated when penalty is levied.
 - (iii) False - Form I is obtained by the selling dealer from his customer in Special Economic Zone. Form J is the form of declaration obtained by the dealer from embassies for getting the benefit of exemption under section 6(3).
 - (iv) True – Assuming that the goods under consideration are declared goods, refund of tax levied under State law shall not be granted unless the Central Sales-tax due on Inter-State sale has been actually paid.
 - (v) False – Clause (ix) has been omitted from section 14. Hence, un-manufactured tobacco and tobacco products are outside purview of section 14 and therefore, the State Government can impose higher rates of sales tax/VAT on these items.
- (b) (i) declared goods
 - (ii) Government
 - (iii) deducted
 - (iv) shall
 - (v) are

Question 6

Mr. Sharvil reported undermentioned data for the financial year 2007-08:

		Amount Rs.
(i)	Total interstate sales during the F.Y. 2007-08 [Inclusive of C.S.T]	1,01,55,800
(ii)	Above sales include excise duty	13,60,000
(iii)	Incentive on sales received from manufacturer	2,30,000
(iv)	Deposit for returnable containers and packages	8,00,000
(v)	Good worth Rs.87,550 (inclusive of tax) made vide Invoice No. 101/ACA dated 29.9.2007 were returned on 31.3.2008.	

Determine the turnover and CST payable assuming the rate of tax at 3%. (10 Marks)

Answer

Computation of turnover and CST payable by Mr.Sharavil

Particulars	Rs.
Sales Turnover	1,01,55,800
Less: Deposit for returnable containers and packages	8,00,000
Turnover (including CST)	93,55,800
Less: Central Sales-tax (See Note 5 below)	2,72,499
Turnover (excluding CST)	90,83,301

Note –

1. Excise duty forms part of sale price. Hence, it should not be deducted.
2. Incentive on sales received from manufacturer should not be deducted from sale price.
3. Deposit for returnable containers does not form part of sale price and hence, Rs.8 lakh has to be deducted from sales turnover.
4. Sales returns of Rs.87,550 should not be deducted from the sale price since the goods were returned after 6 months from the date of sale.
5. Computation of CST

$$\begin{aligned}
 & \frac{\text{Sales turnover including CST} \times \text{Rate of tax}}{100 + \text{Rate of tax}} \\
 & = \frac{93,55,800 \times 3}{103} \\
 & = 2,72,499
 \end{aligned}$$

Note – The above solution has been worked out assuming that incentive on sales, deposit for returnable containers and sales returns are included in the value of total inter-State sales given in the question.