

ADVANCED TAX LAWS AND PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : All references to sections mentioned in Part-A of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2009-10, unless stated otherwise.

PART A

(Answer ANY TWO questions from this part.)

Question 1

- (a) Choose the most appropriate answer from the given options in respect of the following :
- (i) The benefit of amortisation of preliminary expenses under section 35D has been extended to —
 - (a) Manufacturing companies
 - (b) Post-commencement preliminary expenses of service sector units
 - (c) Non-resident companies
 - (d) Non-resident individuals.
 - (ii) No disallowance under section 40(a)(ia) shall be made in the case of a deductor in respect of expenditure incurred in the month of March, if the TDS on such expenditure has been paid before —
 - (a) 31st December
 - (b) 30th September
 - (c) Due date for filing of the return
 - (d) 30 days from the date of tax deduction.
 - (iii) With effect from assessment year 2009-10, the rate of tax under sections 111A and 115AD, on short-term capital gains, arising from the transfer of equity shares in a company or a unit of an equity oriented funds where such transaction is chargeable to securities transaction tax (STT) is—
 - (a) 20%
 - (b) 15%
 - (c) 10%
 - (d) 25%.
 - (iv) Depreciation on new plant acquired and kept as standby in anticipation of an order of supply of goods is —
 - (a) An allowable expenditure on an asset kept as standby
 - (b) Not allowable as asset acquired but not put to use
 - (c) Partly allowable
 - (d) None of the above.

- (v) *Lease rental income derived by a foreign company, by leasing its immovable property situated at Ahmedabad, India, to another foreign company whose payment in US Dollars has been made outside India as per the agreement which is also executed outside India is —*
- (a) *An exempted income in India*
- (b) *Chargeable to income-tax in India as it relates to property situated in India, and deemed to accrue or arise in India*
- (c) *Subject to DTAA agreement entered into by Indian government with another country wherein foreign company is located*
- (d) *None of the above.* (1 mark each)
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *Expenditure incurred by a company after its incorporation and after its business had been set-up, on development of website for conducting its business partly through website could be considered as _____ expenditure.*
- (ii) *Interest on borrowed funds utilised for acquisition of an asset as part of extension of business, could be capitalised till the asset _____.*
- (iii) *Subsidy received by a company operating a sugar mill, which could be utilised only for re-payment of term loans taken by it for setting-up of new units and extension of existing business would be treated as _____.*
- (iv) *Where there is a failure to deduct tax at source or to deposit the tax deducted at source by a company, the company and the Principal Officer shall be deemed to be an _____ under section 201.*
- (v) *Deduction in respect of contribution given by any person other than company under section 80GGC of the Income-tax Act, 1961, to a political party is _____.* (1 mark each)
- (c) *“All companies are not liable to wealth-tax, even those which are liable have scope for minimising it.” Comment.* (5 marks)

Answer 1(a)

- (i) (b) Post-commencement preliminary expenses of service sector units
- (ii) (c) Due date for filing of the return
- (iii) (b) 15%
- (iv) (a) An allowable expenditure on an asset kept as standby
- (v) (b) chargeable to income tax in India as it relates to property situated in India, and deemed to accrue or arise in India

Answer 1(b)

- (i) Expenditure incurred by a company after its incorporation and after its business had been set-up, on development of website for conducting its business partly through website could be considered as **revenue** expenditure.
- (ii) Interest on borrowed funds utilised for acquisition of an asset as part of extension of business, could be capitalised till the asset **put to use** .
- (iii) Subsidy received by a company operating a sugar mill, which could be utilised only for re-payment of term loans taken by it for setting-up of new units and extension of existing business would be treated as **Capital receipt** .
- (iv) Where there is a failure to deduct tax at source or to deposit the tax deducted at source by a company, the company and the Principal Officer shall be deemed to be an **assessee in default** under section 201.
- (v) Deduction in respect of contribution given by any person other than company under section 80GGC of the Income-tax Act, 1961, to a political party is **allowable**.

Answer 1(c)

Only those companies whose net wealth on the corresponding valuation date exceeds Rs. 15,00,000 will be chargeable to Wealth-tax. Non-profit making companies registered under Section 25 of the Companies Act are exempt from levy of wealth tax. Where the company is not resident in India, its assets and debts located outside India shall be excluded from the computation of net wealth.

Companies can minimize their Wealth-tax liability:

- (i) By avoiding investment in taxable assets like jewellery, motor cars, other unproductive assets;
- (ii) In unavoidable cases, investment in the said assets could be made out of loans or debts may be incurred in relation thereto by way of furnishing a security for the loan, so that such debts could be claimed as deduction in computing net wealth,
- (iii) Likewise, purchase house property ,likely to be used by the Directors /Managers/ Secretary, as their residential accommodation or by any other employee having substantial interest in the company could be funded out of loan/raising debts thereon.

Question 2

- (a) *State, with reasons in brief, whether the following statements are correct or incorrect:*
 - (i) *The cascading effect of dividend distribution tax is minimised in the case of holding and subsidiary companies.*
 - (ii) *The provisions of tax deduction at source do not apply to interest on corporate securities under certain circumstances.*

- (iii) *An assessee can be asked to pay interest under section 234A for default in filing of return in time or for non-filing of return and also under section 234B for non-payment or short payment of advance tax even though there is overlapping of some period under the two provisions. (2 marks each)*
- (b) *A new weighted deduction has been introduced recently to encourage outsourcing of scientific research. Explain briefly its scope, applicability and advantages from the tax planning point of view. (5 marks)*
- (c) *A company had taken some unsecured loans by way of inter-corporate deposits (ICDs) from three other companies for use in its business and paid interest on those ICDs, which were offered for taxation by the recipient companies.*
- The income-tax officer contends that the unsecured loans are taxable as deemed dividends under section 2(22)(e). Can he do so ? Explain. (4 marks)*

Answer 2(a)

- (i) *True* : Section 115-O(1A) provides that while determining the tax on dividends distributed payable by a domestic company, the amount of dividends received from its subsidiary company will be reduced if the subsidiary company has paid tax under this section on such dividend and the domestic company itself is not a subsidiary of another company.
- (ii) *True* : With effect from 1st June, 2008, section 193 has removed the requirements of deducting tax at source from interest payable to a resident on any security issued by a company where such security is in dematerialized form and is listed on a recognized stock exchange in India.
- (iii) *True* : Defaults under section 234A and 234B are independent of each other. Therefore, interest is payable under both the provisions, despite there being some overlapping of same period under the two provisions [*Roshanlal Jain (AOP) v. Dy CIT*]

Answer 2(b)

As a result of the new Clause (iia) inserted in Section 35, w.e.f. 1.4.2009, an amount equal to one and one-fourth times (125%) of any sum paid to a company by any assessee, to be used by the donee company for scientific research, will be allowed as deduction. The donee company must be a company registered in India with the main object of scientific research and development and it should be approved by the prescribed authority for this purpose.

This deduction could be claimed by any person—whether company or not making payment to the company approved for this purpose. There is no requirement that the scientific research carried out by the approved donee company should be related to the business of the donor. This would give scope for tax planning especially by small and medium sized assesseees who are otherwise handicapped for making heavy investment for building in house scientific facilities. Further, they can continue to claim deduction to the extent of 100% of the sum spent by them as revenue expenditure. On scientific research, if any, incurred by them under Section 35(1)(i).

Answer 2(c)

No, The Assessing Officer cannot invoke the provisions of Section 2(22)(e) to treat the Inter-corporate Deposits as 'Deemed Dividends' under Section 2(22)(e).

The requisite condition for invoking Section 2(22)(e) is that the payments must be made by way of loan or advance. There is a clear distinction between inter-corporate deposits vis-à-vis loans and advances. The deeming fiction in the provision should not be given a wider meaning than what it purports to be and the provisions would have to be accorded strict interpretation and the ambit should not be pressed beyond its true limits. *Bombay Oil Industries Ltd. v. Dy. CIT.*

Question 3

- (a) *When will the 'book profits' of a company deemed to be the total income of the company for the purposes of levy of minimum alternate tax (MAT) under section 115JB ?* (3 marks)
- (b) *Indicate briefly the points to be taken into account while preparing annual accounts for the purpose of MAT.* (3 marks)
- (c) *The MAT does not apply to foreign companies operating in India. Do you agree? Give reasons.* (3 marks)
- (d) *What is 'reverse mortgage' ? Whether loan received under the scheme of reverse mortgage amounts to income in the hands of borrower ? Whether mortgage of the property under reverse mortgage is treated as transfer so as to attract capital gains under section 45 ? Whether alienation of the mortgaged property by the mortgagee for the purpose of recovering the loan would amount to transfer so as to attract capital gains under section 45 ?* (6 marks)

Answer 3(a)

Section 115-JB provides that in the case of a company,

- if the tax payable on the total income,
- as computed under the act in respect of any previous year
- is less than ten per cent of its 'book profits',

such book profits shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be ten percent of such book profits.

Answer 3(b)

Sub-section (2) of section 115JB requires the company to prepare its profit and loss account for the relevant previous year in accordance with provisions of Parts II and III of Schedule VI of the Companies Act, 1956. However, while preparing the annual accounts including profit and loss account:

- (a) The accounting policies;
- (b) The accounting standards followed for preparing such accounts including profit and loss accounts; and
- (c) The method and rates adopted for calculating the depreciation.

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account as laid before the company at its annual general meeting in accordance with the provisions of Section 210 of the Companies Act, 1956. But where the company has adopted or adopts the financial year which is different from the previous year under the Income Tax Act, (a), (b) and (c) aforesaid shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Answer 3(c)

Incorrect : MAT applies to any company domestic as well as foreign. However, where a non-resident company's income is assessed on a presumptive basis under Section 44B or 44BB or at a flat rate under Section 115A on royalty and technical fees, the book profit becomes immaterial for regular assessment and the presumptive income tax will prevail.

Answer 3(d)

An individual being the owner of a house property but does not have regular source of income, can mortgage his property with the Bank and the Bank in consideration of mortgage, assures to the borrower periodic amount during his lifetime is called Reverse Mortgage.

Vide Notification No.93/2008 dated 30.9.2008, The Central Government has notified the "Reverse Mortgage Scheme, 2008". As per the same, an individual aged 60 years or above and in the case of a married couple, where either the husband or wife is 60 or above, will be treated as an eligible reverse mortgagor to avail the above benefits. Any eligible person may enter a reverse mortgage transaction by applying in writing to the approved lending institution if the capital asset is a residential house property located in India, which is mortgaged, is owned by him and is free from any encumbrances.

An approved lending institution being any scheduled bank or housing finance company may disburse the loan to the reverse mortgagor by any one or more of the following modes namely:

- (i) Periodic payments to be decided mutually between the institution and the reverse mortgagor.
- (ii) Lump sum payment in one or more trenches, to the extent that the aggregate of amount disbursed as lump sum payment does not exceed 50% of the total loan amount sanctioned.
- (iii) The loan under reverse mortgage shall not be granted for a period exceeding twenty years from the date of signing the agreement by the reverse mortgagor and the approved lending institution.

No, new Section 10(43) has been inserted to provide that such loan amount is exempt from Income-tax.

No, a new Clause (xvi) has been inserted in Section 47 to provide that any transfer of a capital asset in a transaction to a reverse mortgage is not treated as transfer, therefore, not liable to capital gain tax under Section 45.

Yes, the reserve mortgagor or his legal heirs or estate, shall be liable for repayment of the principal amount of loan along with interest to the approved lending institution at the time of foreclosure of loan agreement. Therefore, the alienation of the mortgaged property by the mortgagee for the purpose of recovering the loan will be treated as transfer and the borrower (i.e., mortgagor) will be liable to tax on capital gains if any, arising out of such alienation.

PART B

(Answer Question No. 4 which is compulsory and any two of the rest from this part.)

Question 4

- (a) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *The exemption notification issued under section 5A of the Central Excise Act, 1944 is not applicable in respect of DTA clearance, unless specifically provided in the notification by —*
 - (a) *SSI unit*
 - (b) *EOU unit*
 - (c) *Both (a) and (b)*
 - (d) *None of the above.*
 - (ii) *Under the central excise law, any article, material or substance, capable of being bought and sold for a consideration shall be deemed to be —*
 - (a) *Goods*
 - (b) *Manufactured*
 - (c) *Marketable and hence excisable*
 - (d) *Produced.*
 - (iii) *Questions arising out of orders made by CESTAT are appealable to High Court except those relating to —*
 - (a) *Classification and valuation*
 - (b) *Duty drawback*
 - (c) *Refund of excise duty*
 - (d) *Advance ruling.*
 - (iv) *Value of export goods under the Customs Act, 1962 is not determined by—*
 - (a) *Transaction value*
 - (b) *Residual method*
 - (c) *Computed value*
 - (d) *Market value.*
 - (v) *The term 'authorised representative' under section 35Q of the Central Excise Act, 1944 includes, among others —*
 - (a) *All Company Secretaries*
 - (b) *Company Secretaries with 10 years post qualification experience*

- (c) *Company Secretaries with certificate of practice*
- (d) *Physics graduates.*
- (vi) *Under the Customs Act, 1962, an appeal before tribunal against the order of Commissioner shall be filed within —*
- (a) *30 Days*
- (b) *3 Months*
- (c) *45 Days*
- (d) *None of the above.*
- (vii) *Smuggled goods are liable to confiscation —*
- (a) *Only when they are in the same form*
- (b) *Even when the form has changed or mixed with other goods*
- (c) *Both (a) and (b)*
- (d) *None of the above.* (1 mark each)
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *In case of fraud, collusion, willful mis-statement and suppression of facts, or contravention of any provision of the Central Excise Act, 1944 or Rules with intent to evade payment of duty, demand for duty can be raised _____.*
- (ii) *Rules made by the Central Government and regulation made by the Central Board of Excise and Customs (CBE&C) can provide for penalty upto Rs. _____ on any person who violates any provision of rules or regulations.*
- (iii) *Persons claiming refund of excise duty under section 11B have to make an application within _____ from the 'relevant date'.*
- (iv) *Under the Customs Act, 1962, duty, interest, penalty or fine to be rounded off to _____.*
- (v) *The person from whom documents are seized is entitled to take _____ therefrom in presence of customs officer.*
- (vi) *Under section 46, an importer has to file a _____ for home consumption or warehousing.*
- (vii) *Assessees paying duty of Rs. 1 crore or more per annum through personal ledger account (PLA) are required to submit annual financial information statement for each financial year by 30th November of succeeding year in prescribed form _____.*
- (viii) *_____ can be granted in the case of lost, destroyed or abandoned goods under section 23 of the Customs Act, 1962.* (1 mark each)
- (c) *Explain briefly the term 'import manifest'.* (5 marks)

OR

A manufacturing company has imported certain second-hand machinery for its use and declared its value on the basis of the 'transaction value'. Can the

declared value be rejected by the authorities and, if so, when and how ? What are the details which the importer must submit in support of its claim ?

(5 marks)

Answer 4(a)

- (i) (b) EOU unit
- (ii) (c) Marketable and hence excisable
- (iii) (a) Classification and valuation
- (iv) (d) Market value
- (v) (c) Company secretaries with certificate of practice
- (vi) (b) 3 months
- (vii) (b) Even when the form has changed or mixed with other goods.

Answer 4(b)

- (i) In case of fraud, collusion, willful mis-statement and suppression of facts, or contravention of any provision of the Central Excise Act, 1944 or Rules with intent to evade payment of duty, demand for duty can be raised **within 5 years**.
- (ii) Rules made by the Central Government and regulation made by the Central Board of Excise and Customs (CBE&C) can provide for penalty upto **Rs.50,000** on any person who violates any provision of rules or regulations.
- (iii) Persons claiming refund of excise duty under section 11B have to make an application within **one year** from the 'relevant date'.
- (iv) Under the Customs Act, 1962, duty, interest, penalty or fine to be rounded off to **Rupee one**.
- (v) The person from whom documents are seized is entitled to take **extract** therefrom in presence of customs officer.
- (vi) Under section 46, an importer has to file a **Bill of Entry** for home consumption or warehousing.
- (vii) Assesseees paying duty of Rs.1 crore or more per annum through personal ledger account (PLA) are required to submit annual financial information statement for each financial year by 30th November of succeeding year in prescribed form **ER-4**.
- (viii) **Remission of duty** can be granted in the case of lost, destroyed or abandoned goods under section 23 of the Customs Act, 1962.

Answer 4(c)

'Import Manifest' is a record of the goods carried by a vessel, which is furnished by the carrier-in-charge of the vessel carrying imported goods. Under Section 30(1) of the Customs Act, the import Manifest is required to be filed before the arrival of the vessel or aircraft. In the case of a vehicle it is within 12 hours after arrival. The forms of the Import Manifest are prescribed in the Import Manifest (Vessels) Regulations, 1971 and

Import Manifest (Aircraft) Regulations, 1976, which have been made under Section 157 of the Customs Act, 1962. Section 30(1) proviso also enables the presentation of Import Manifest even before the arrival of the steamer/vessel. The Import Manifest is required to be delivered in duplicate in the Import Department with full particulars in respect of the following:

- (a) General Declaration re-information about the Vessel, its master, crew, passengers, etc.
- (b) Cargo declaration.
- (c) List of private property in the possession of master, officers' crew.

As regards air consignments, the Import Cargo Manifest is presented in Triplicate/Quadruplicate by the persons concerned immediately on landing of the Aircraft.

Alternate Answer 4(c)

As per the provisions of Section 14, as amended by the Finance Act, 2007, the value of imports and exports shall be based on the Transaction Value. The Customs Valuation (Determination of value of Imported Goods) Rules, 2007 also deals with the Transaction Value and conditions for its applicability. It also deals with transaction value of identical goods, similar goods and the situations where the above methods cannot be applied. It also provides for deductive value methods.

Where the proper officer has reason to doubt the truth or accuracy of the value declared in relation to the goods, he may ask the importer to furnish further information including documents or other evidence and on a consideration of the information received should proceed to consider the value declared and even after such consideration decides to reject the declared value, shall proceed to determine the value by proceeding sequentially in accordance with Rules 4 to 9.

If the value of identical or similar goods imported at or about the same time in comparable quantities is significantly higher, or where the sale involves abnormal discount or reduction from the ordinary competitive price, special discount, misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture/production, etc. the authorities can raise doubts about the declared value. Where the declared value is reflected and assessable value is re-determined the Assessing Officer shall issue detailed speaking order.

Importers may submit, *inter alia*, a Chartered Engineer's Certificate or any equivalent in the country of supply, indicating the price, current CIF value of the new machinery, if purchased now, year of manufacture, sale price of supplier, present condition of machinery, nature of conditioning or repairs carried out, if any, the cost thereof and expected life span. In the absence of proper load port certificate of local Chartered Engineer's certificate may be submitted.

[Circular No.4/2008 dated 12.2.2008 deals with valuation practice of second hand machinery to be adopted by all customs houses/customs commissionerates.]

Question 5

- (a) Under section 37B of the Central Excise Act, 1944 and section 151A of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C) issues

various orders, instructions and directions to its officers from time to time. What is their binding effect ? Are they binding on all departmental authorities including quasi judicial authorities like Commissioner (Appeals) ? Are there any restrictions on such powers ? Can they have retrospective effect ?

(5 marks)

- (b) Hetal manufactures hair dye. It is packed in pouches, each pouch containing 3 grams, 3 pouches (sachets) are sold in one packet. The net weight of each pouch, as also the net weight of the commodity in 3 pouches and the maximum rate is printed on the pouches. Examine whether the provisions of section 4A of the Central Excise Act, 1944 will apply for the valuation purpose. (5 marks)*
- (c) Commissioner of Central Excise can review the order but cannot issue fresh notice extending period of limitation. Comment. (5 marks)*

Answer 5(a)

Under Section 37B of the Central Excise Act and Section 151A of the Customs Act 1962;

The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board.

Provided that no such orders, instructions or directions shall be issued:

- (a) So as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) So as to interfere with the discretion of the [Commissioner of Customs (Appeals) in the exercise of his appellate functions].

Such circulars/instructions etc are binding in law on the authorities under the respective statutes but they are not binding on quasi-judicial authorities like Commissioner (Appeals) or judicial authorities like Tribunal, High Court or Supreme Court. Recently the constitution Bench of the Supreme Court also reaffirmed in *CCE v. Ratan Melting & Wire Industries* (2008) 17 STT 103 that they are not binding upon the court. "It is for the court to declare what a particular provision of statute says and it is not for the executive. A circular which is contrary to the statutory provision has really no existence in law"

The circulars are effective from the date on which they are issued. No circular can be made effective retrospectively.

Answer 5(b)

It is beyond any doubt or dispute that the commodity in question is being sold in 'multi piece package'. Identical quantity of commodity is packed in each sachet. Yet again admittedly 3 sachet are packed in one packet. The weight of 3 sachet is 9 GMS i.e., less than the prescribed weight of 10 grams.

The packet describes the commodity in question. It not only discloses the weight contained in each sachet but also discloses the weight contained in the packet of 3

sachet. Therefore, the intention of the manufacture to sell the commodity by weight is explicit.

Rule 17 provides for additional declarations to be made on multi piece packages. It envisages declaration of the quantity and the sales price thereof on each of the packages when the quantity is sold in the multiples packages. Section 4A of the Act would apply only when it is statutorily required to apply the provisions of the Rules.

Rule 34 contains an exemption clause. The exemption clause would apply if the commodity is sold by weight or measure subject of course to the condition that net weight of the commodity is 10 grams, or less. This legal requirement in this case also stands complied with. Once it is held that Rules have no application in respect of the commodity as marketed and sold by the respondent. Section 4A of the Act will have no application [*Commissioner of Central Excise v. Craftech Product Inc.* JT (2008)(4) SC 335].

Answer 5(c)

Correct : It is based on the judgement given by CESTAT in case of *Maa Communications v. CST* (2007) 6 ST 53.

The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed at any time within two years of the original order but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) Section 84.

Appeal against the order of Commissioner (after Revision) lies with CESTAT under Section 86.

Question 6

- (a) *What are the options available, in the context of CENVAT credit rules, to a manufacturer manufacturing both exempt and dutiable goods or service-provider providing taxable as well as exempt services, in respect of inputs/input services used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services ?* (5 marks)
- (b) *Under certain circumstances, the central excise law allows an assessee to approach the Central Government with a request to revise appellate orders passed by the departmental authorities. Indicate the circumstances where such a possibility exists and the powers of the Central Government in this regard.* (5 marks)
- (c) *Write a note on excise concession on export of excisable goods.* (5 marks)

Answer 6(a)

Such manufacturer/service provider has the following options:

- (i) Maintain separate inventory and accounts of receipt and use of inputs and input services for exempted goods/exempted output services (Rule 6(2) of CENVAT Credit Rules).
- (ii) Pay an amount equal to 10% of the value of exempted goods (if he is a

manufacturer) and/or 8% of the value of exempted services (if he is a service provider) and does not maintain separate inventory and records [Rule 6(3)(i)].

- (iii) Pay an 'amount' equal to proportionate CENVAT Credit attributable to exempted final product/exempted output services.

The assessee cannot utilize CENVAT Credit in respect of inputs/input services utilized exclusively for manufacture of exempted final products/exempted taxable services.

Answer 6(b)

Under Section 35EE of the Central Excise Act, if the Appealable order are passed by the Commissioner (Appeals) in cases of:

- (i) Loss of goods;
- (ii) Rebate of duty of excise on goods exported;
- (iii) Export under bond without payment of duty.

a revision application can be filed before the Central Government. The Central Government has the discretion to refuse such application where the amount of duty, fine penalty does not exceed Rs.5,000, under section 35EE(1A) or where the Commissioner of C.E. is of the opinion that an order passed by Commissioner (Appeals) under Section 35A is not legal or proper, he may direct the proper officer to make an application on his behalf to Central Government for revision of such an order.

On receipt of such an application, it will be examined in the Ministry of Finance, after obtaining the relevant records and giving opportunity for personal hearing. Decision will be taken at the level of Joint Secretary to the Government of India.

The Central Government has powers to increase the penalty or demand duty or increase confiscation. In all such cases, the concerned party will be given opportunity for hearing as well as defence.

Answer 6(c)

Exporter of Excisable Goods is entitled to several benefits. Under the schemes available in Excise Law, the Exporter of Excisable Goods can avail following facilities:

- (a) To export excisable goods on payment of excise duty and to claim refund of such duties subsequent to the export.
- (b) To export the goods without paying excise duty but on the basis of a bond being executed to fulfill the obligation to export.
- (c) To claim rebate of duty paid on excisable goods used as input in the manufacture of goods which are exported.
- (d) To process excisable goods required as inputs for manufacture of goods to be exported, without paying duty on such inputs.

Besides, the CENVAT Scheme also contains in built provisions to Act as a major incentive for export, which the exporter can make use of.

Question 7

(a) *Pranav and Parul, the petitioners, were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offence under sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the Act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on simultaneously and petitioners were alleged to have committed offences punishable under sections 132 and 135(1)(b). Whether the criminal prosecution can be permitted to continue against both when the adjudication proceedings are in favour of them ? Discuss.* (5 marks)

(b) *Eva Offshore Ltd. is engaged in drilling operations for exploration of offshore oil, gas and other related activities under contracts. The drilling operations are carried out at oil rigs/vessels which are situated outside the territorial waters of India.*

Until around November, 1993, the company was permitted to transship stores to the oil rigs without levy of any customs duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area.

Whether oil rigs engaged in operations in the exclusive economic zone/continental shelf of India, falling outside the territorial waters of India, are 'foreign going vessels' as defined by section 2(21) of the Customs Act, 1962, and are entitled to consume imported stores thereon without payment of customs duty in terms of section 87 of the Customs Act 1962 ? (5 marks)

(c) *Arpit Alloys Ltd. imported a consignment of metal bars during July, 2008 by sea, weighing 5,300 tons from U.K. A bill of entry for home consumption was filed and an order for clearance was passed by the Assistant Commissioner. The company paid the applicable duty. Thereafter, delivery was taken and on examination by the company's representatives; it was found that only 5,000 tons of metal bars were available at the dock though duty was paid for the entire lot of 5,300 tons. Since there was no short landing of the cargo, the short delivery of 300 tons was also supported by the weightment certificate issued to the company by the port trust authorities. The company made a representation to the customs department for appropriate relief under the Customs Act, 1962. Examine.* (5 marks)

Answer 7(a)

The petitioners were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offences under Sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on

simultaneously and petitioner were alleged to have committed offences punishable under the Sections 132 and 135(1)(b).

The High Court observed that the charges cannot be framed and criminal prosecution cannot be permitted to continue against the petitioner once adjudication proceedings on merits have been found in favour of the petitioners.

The High Court observed that the Department had failed in adjudicatory process against petitioner and yet continued to contend that criminal proceedings must go on. The High Court observed that the legal system by which we are governed is adversarial in nature. But there is a special responsibility on Government and public authorities to act reasonably and in fair manner. The High Court opined that the already over-burdened legal system could not be further burdened by unnecessary cases.

The above contention is as per judgement in case of *Anil Mahajan and Another v. UOI and another* (Del) 5 February, 2008.

Answer 7(b)

The appellants are engaged in drilling operations for exploration of offshore oil, gas and other related activities under contract. The drilling operations are carried on at Oil Rigs/Vessels, which are situated outside the territorial waters of India. Until around November, 1993 the appellant and all other similarly situated companies which were engaged in oil and gas exploration and exploitation were permitted to transship stores to the oil rigs without levy of any customs duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area.

The Supreme Court observed that the principle underlying under section 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so called foreign going vessel is located within territory over which the coastal state have complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in area to which the Customs Act has been extended. Reference or reliance to the vessel being a foreign going vessel shall be of no consequences and the customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Conventions 'UNCLOS, 1982.

The Court further observed that the stores are unloaded and consumed within the maritime boundary or within the limit of Customs Act, Section 12 will be attracted as it would be construed that there would have been an import within the territory of India to which Customs Act applies.

The above contentions are as per judgement in the case of *Aban Loyd Chiles Offshore Ltd. v. UOI* (SC) 11 April, 2008.

Answer 7(c)

As per Section 23, where the imported goods have been lost without pilferage or destroyed at any time before clearance for home consumption, duty on such goods would be remitted. Here 'loss' means that the loss is forever and there is no possibility of tracing it or recovering it.

In the given case 300 metric tons of metal bars have been lost in the custody of port trust after the order for clearance was passed and duty payment was made. The weightment certificate issued by Port Trust Authorities also substantiates the same. The company is therefore entitled to remission of the duty on the lost goods i.e., 300 tons, under Section 23 of the Customs Act.

PART C

Question 8

Attempt **any four** of the following :

- (i) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
 - (a) *Countries that employ explicit policies designed to attract international trade oriented activities by minimisation of taxes and reduction or elimination of other restrictions on business operations are described as _____.*
 - (b) *The authority for advance ruling will not allow consideration of any question involving determination of _____ of any property.*
 - (c) *The ruling given by the authority for advance rulings will be binding on _____.*
 - (d) *Indian income-tax law does not provide any exemption in case of amalgamation of an Indian company with a foreign company wherein the resultant amalgamated company is a _____.*
 - (e) *_____ means any area outside India which may be notified as such by the Central Government for the purpose under section 90A of the Income-tax Act, 1961. (1 mark each)*
- (ii) *If a tax payer has legitimately reduced his tax burden by taking advantage of treaty, the benefit cannot be denied to him on the ground of loss of revenue. Explain in the context of decided case law. (5 marks)*
- (iii) *A resident of India has paid tax in a foreign country in respect of his income which accrued in that country. India has no double taxation avoidance agreement with that country. Such income is also taxable in India. Is there any relief available to him in respect of the tax paid by him ? Explain. (5 marks)*
- (iv) *Distinguish between 'international transactions' and 'cross border transactions'. (5 marks)*
- (v) *Can a public sector undertaking which has undertaken a transaction with a non-resident, seek an advance ruling in respect of tax liability of the non-resident and also its own liability ? Indicate the scope of applicability of such advance rulings. (5 marks)*
- (vi) *"Under the special provisions of the Income-tax Act, 1961, any income arising from an international transaction shall be computed having regard to the arm's length price." In this context, briefly indicate when the provisions of arm's length price will apply and when it will not apply and also state its scope. (5 marks)*

Answer 8(i)

- (a) Countries that employ explicit policies designed to attract international trade oriented activities by minimisation of taxes and reduction or elimination of other restrictions on business operations are described as **Tax Havens** .
- (b) The authority for advance ruling will not allow consideration of any question involving determination of **fair market value** of any property.
- (c) The ruling given by the authority for advance rulings will be binding on **both parties before it**.
- (d) Indian income-tax law does not provide any exemption in case of amalgamation of an Indian company with a foreign company wherein the resultant amalgamated company is a **foreign company** .
- (e) **Permanent establishment** means any area outside India which may be notified as such by the Central Government for the purpose under section 90A of the Income-tax Act, 1961.

Answer 8(ii)

The need for agreement of Double Tax Avoidance (DTAA) arises because of Rules in two different countries regarding chargeability of income based on receipt and accrual, residential status etc. As there is no clear definition of income and taxability thereof, which is accepted internationally, an income may become liable to tax in two countries. In such a case, the possibilities are as under:

The two countries have an agreement for Double Tax Avoidance in which case possibilities are:

- (i) The income is taxed only in one country.
- (ii) The income is exempt in both countries.
- (iii) The income is taxed in both countries, but credit for tax paid in one country is given against tax payable in the other country.

If the two countries do not have an agreement for Double Tax Avoidance between them. In such a case the domestic law of the country will apply. In the case of India, the provisions of Section 91 of the Income Tax Act will apply. The Central Board of Direct Taxes has clarified vide circular No.333 dated 2nd April, 1982 that in case of conflict in the provisions of the agreement for tax avoidance of double taxation and the Income Tax Act, the provisions contained in the agreement for Double Tax Avoidance will prevail.

The Government of India has entered into numerous tax treaties as well as trade agreements with various foreign countries to provide stability and certainty to the tax laws and commercial relationship between parties in India and abroad. The large number of judicial pronouncements including Advance Rulings in the recent years under the Tax Laws, both Direct and Indirect, have added to the confidence of non-residents being inspired with Indian Fiscal and Judicial Systems. The wealth of judicial decisions from Supreme Court as well as High Court and the Tribunal in deciding numerous tax disputes help to remove the uncertainties and ambiguities in the tax system and administration. The tax treaties have helped both the collaborators from abroad and the Indian enterprises

in the private and public sectors to know precisely the nature extent and scope of tax liability as also the country in which tax is payable.

In the case of *Union of India v. Azadi Bachao Andolan* (2003 132 Taxmann 373 SC). Supreme Court clearly laid down that the benefit of DTAA can not be denied even if it leads to loss of revenue.

Answer 8(iii)

Yes, he can claim the unilateral relief provided under Section 91 of the Income Tax Act, 1961.

If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Hence, he will be entitled to a deduction from the Indian Income Tax payable by him of a sum calculated on such doubly taxed income so included in his total income, at the Indian rate of tax or the rate of tax of the said country, whichever is lower or at the Indian rate of tax, if both rates are equal.

Answer 8(iv)

A transaction will be considered as international Transaction if it satisfies the following two conditions cumulatively:

- (a) It must be a transaction between two associated enterprises; and
- (b) At least one of the two enterprises must be a non-resident.

A transaction is considered to be a cross-border transaction if it originates in one country and gets concluded in another country.

A cross-border transaction may or may not be an international transaction within the meaning of Chapter X. Similarly a transaction which is not a cross border transaction may still be an international transaction for the purposes of Chapter X if it falls within the ambit of the definition of international transaction.

Answer 8(v)

A public sector undertaking, being a resident, has been notified by central government vide notification No. 725(E) dated 03-08-2000 in exercise of power conferred by sub-clause (iii) of clause (b) of section 245N as applicant for the purpose of advance ruling and if it has undertaken a transaction with a Non-resident and it can seek an Advance Ruling in respect of tax liability of non-resident as per Section 245N(i)(ii).

The fact that such resident is a public sector undertaking (PSU) notified under Section 245N(b)(iii) should not make any difference. It cannot, however, seek any ruling in respect of its own tax liability. (In re Airport Authority of India (2008) 168 Taxmann 158 AAR, New Delhi).

The ruling pronounced by the authority is binding on both parties before it. It will be binding:

- (i) On the applicant who had sought it;
- (ii) In respect of the transactions in relation to which the ruling had been sought;
and
- (iii) On the Commissioner and the income Tax Authorities subordinate to him, in respect of the applicant and the said transaction.

Answer 8(vi)

Under the provisions of Section 92(1) of the Income Tax Act, 1962 any income arising from an International Transaction shall be computed having regard to the 'arms length price'. When the international transaction comprises of only an outgoing, the allowance for any expense or interest arising from the international transaction shall also be determined having regard to the arm's length price.

Thus the provisions of 'arms length price' shall apply not only to income generating transactions (e.g. sale of goods, royalty, fees for technical services, know-how, etc. for providing services) but also to transactions resulting into expenditure (purchases, interest on loan, etc.)

The provisions will not apply if their application results in decrease in the overall incidence of tax in India in respect of the parties involved in the international transactions. Where the computation of income or determination of the allowance for any expenses or interest or any cost or expense allocated or apportioned, as the case may be, computed under section 92(2) has the effect of reducing the income chargeable to tax or increasing the loss computed on the basis of entries made in the books of account in respect of previous year in which the international transaction was entered into, the provisions will not apply [Section 92(3)].

'Arms length price' means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in controlled conditions. It is the price that would have existed between enterprises not associated or related with each other [Section 92F(ii)].
