

subsidize and others do not, the result can be that the subsidizing countries are producing considerably more than they normally would.

Answer 8(iii)

Non tariff barriers are technical regulations and standards; import licensing; rules for the valuation of goods at customs; preshipment inspection; further checks on imports; investment measures.

Quantitative Restrictions, on the other hand, refer to specific limits imposed by countries on the quantity or value of goods that can be imported or exported to regulate or prohibit international trade. Quantitative Restrictions specifically refer to measures such as licensing requirements for exports/imports, quotas and ceilings.

Answer 8(iv)

The Director General (DG) of Safeguard, on the complaints of the India manufacturers, cannot put total control over import of industrial goods and chemicals imported from China because a total control violates the WTO multilateral trading norms.

The right course of action is that DG Safeguard can carry out safeguard investigations against import of industrial goods and chemicals. The investigations if lead to the conclusion that there is sharp increase in the import of industrial chemicals, leading to losses for the domestic industry, it can impose 200-day temporary import duties on the import of industrial chemical. The safeguard duty could be in place up to three years if the injury continues. Safeguard duty usually takes the form of increased duties and acts as quantitative restriction on imports.

The WTO allows use of 'Special Safeguard Measures (SSM)' to its members for preventing injury to a local industry due to imports. The SSM leads to imposition of additional import duties on products after it is conclusively proved that there has been a surge in the import of an identified product leading to domestic market disruption and injury to the industry. India can use the WTO approved SSM where special import duties are imposed to prevent import surges to help Indian industry against cheap imports.

Answer 8(v)

There is a threefold distribution of legislative powers stipulated in Article 246 read with Schedule VII of the Constitution of India. List I of the Union list in Schedule VII comprises of 99 items or subjects over which the Union shall have the exclusive powers of legislation. List II comprises of 61 items over which the State Legislature shall have the exclusive powers of legislation. List III the concurrent list comprises of 52 items over which the Parliament and the Legislatures of States shall have concurrent powers.

Imposition of excise duties on alcoholic liquor for human consumption, opium etc is the legislative competence of the State Government under Article 246 read with Schedule VII of State List.

Answer 8(vi)

The Chinese Government can seek and question the safeguard investigation report of the US Government on the import of steel pipes by the US industry. In case the investigation lacks of factual data, the Chinese Government can ask for withdrawal of the antidumping and countervailing duties. China can use the WTO's dispute settlement procedure to seek the withdrawal of the subsidy.

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) Which of the following does not fall under the State List as stipulated in the Article 246 read with Schedule VII of the Constitution of India —
 - (a) Excise on alcoholic liquors and narcotics
 - (b) Taxes on consumption and sale of electricity
 - (c) Taxes on advertisements in newspapers
 - (d) Taxes on advertisements other than those contained in newspapers.
 - (ii) If a company assessee has not filed the prescribed income-tax return within the prescribed time limit, carry forward of losses sustained under the head 'profits and gains of business or profession' or 'capital gains' and its set-off will not be permitted as per the provisions of —
 - (a) Section 139(3) read with section 80
 - (b) Section 139(1)
 - (c) Section 139(4)
 - (d) Section 139(5).
 - (iii) Credit of Minimum Alternate Tax (MAT) in respect of excess amount of tax paid under section 115JB could be carried forward from assessment year 2006-07 onwards for —
 - (a) 5 Assessment years
 - (b) 7 Assessment years
 - (c) 8 Assessment years
 - (d) 4 Assessment years.
 - (iv) Which of the following reflects the correct position regarding the binding powers of the Central Board of Direct Taxes (CBDT) —
 - (a) The instructions of the CBDT are binding on the department and the assessee
 - (b) Courts are bound by the instructions of the CBDT
 - (c) The instructions are binding on the department, but not on the assessee
 - (d) The instructions by the CBDT may impose a burden on the assessee.

- (v) *An association of persons and body of individuals who are subject to tax audit in the immediately preceding financial year, making payment to resident contractor under section 194C —*
- Are not liable to deduct tax at source*
 - Shall be liable to deduct tax at source*
 - Are liable to deduct tax at source, if the turnover during the current year exceeds Rs.40 lakh*
 - 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) :*
- Section 2(23A) defines 'foreign company' as a company, which is _____. However, all non-Indian companies are not necessarily_____.*
 - The Appellate Tribunal's decision would have _____ within the jurisdiction and has a _____ value outside the concerned jurisdiction.*
 - A loss incurring company and a profit making company may _____ in order to reduce the overall incidence of _____ under the Income-tax Act, 1961.*
 - Depreciation on a generator purchased and kept as stand by will be allowed in spite of the same not put to use, as it has _____ use by the assessee during the year.*
 - The return of income has to be signed by the _____ in the case of company and in his absence by one of the _____. (1 mark each)*
- (c) *Examine whether the following are 'assets' under the provisions of the Wealth-tax Act, 1957 :*
- A commercial complex.*
 - A building occupied by the assessee for business purposes.*
 - Aircrafts owned and used by the assessee for business purposes.*
 - Land owned by the assessee situated outside a municipality but within a notified area.*
 - Jewellery, bullion and utensils made of precious metals. (1 mark each)*

Answer 1(a)(i)

- (c) Taxes on advertisement in newspaper

Answer 1(a)(ii)

- (a) Section 139(3) read with Section 80

Answer 1(a)(iii)

- (b) 7 Assessment years

Answer 1(a)(iv)

- (c) The instructions are binding on the department, but not on the assessee.

Answer 1(a)(v)

- (b) Shall be liable to deduct tax at source

Answer 1(b)

- (i) Section 2(23A) defines 'foreign company' as a company, which is **Not a domestic company**. However, all non-Indian companies are not necessarily **foreign companies**.
- (ii) The Appellate Tribunal's decision would have **Binding effect** within the jurisdiction and has a **persuasive** value outside the concerned jurisdiction.
- (iii) A loss incurring company and a profit making company may **merge** in order to reduce the overall incidence of **liability to tax or tax liability** under the Income-tax Act, 1961.
- (iv) Depreciation on a generator purchased and kept as stand by will be allowed in spite of the same not put to use, as it has a **passive** use by the assessee during the year.
- (v) The return of income has to be signed by the **Managing Director** in the case of company and in his absence by one of the **Directors**.

Answer 1(c)

- (i) Any property in the nature of commercial establishment or complexes are not assets as per Section 2(ea)(i)(5) of the Wealth-tax Act, 1957.
- (ii) Any house occupied by an assessee for the purpose of business or profession carried on by him is exempt from Wealth Tax under section 2(ea)(i)(3).
- (iii) Aircraft etc. (other than those used by the assessee for Commercial Purpose) are treated as assets as per Section 2(ea)(iv). Aircraft used by the assessee for its own business shall be treated as commercial purpose and therefore not treated as assets under Wealth Tax Act.
- (iv) Land situated outside municipality but within the area (not being more than 8 kms from the local limits of any municipality) as notified by the Central Government is considered as an urban land and an asset under Section 2(ea)(v) Explanation (1)(b).
- (v) Jewellery, bullion and utensils made of precious metals are treated assets under the Wealth Tax Act provided these are not held as stock in trade by the assessee [Section 2(ea)(iii)]

Question 2

- (a) *State, with reasons in brief, whether the following statements are correct or incorrect:*
- (i) *Taxes on income and corporation tax are collected by the Central Government and distributed between the Union and States.*
 - (ii) *Companies formed under section 25 of the Companies Act, 1956 without*

any profit motive, trade, professional or similar associations become liable to tax under the Income-tax Act, 1961 under certain circumstances.

- (iii) *The minimum penalty for repayment of deposits in contravention of section 269T is Rs. 25,000 and is imposed by the Assessing Officer.*

(2 marks each)

- (b) *Modern Ltd. entered into an agreement with Synergy Ltd. for granting on lease to Synergy Ltd. its 8,000 sq. mtrs. land lying vacant adjacent to the factory premises of Synergy Ltd. for a period of 12 years commencing from May, 1996.*

Under the terms of the agreement, Synergy Ltd. had to build a factory building, pay an annual rent @ Rs.100 per sq. mtr. of the leased land of 8,000 sq. mtrs. and surrender the building to Modern Ltd. at the end of the lease without any consideration. Synergy Ltd. complied with the terms and conditions of the lease agreement.

The depreciated value of the building surrendered and taken possession by Modern Ltd. in May, 2008 was Rs.4.22 crore. Accounts department of Modern Ltd. is of the opinion that an equivalent amount is to be taken in the accounts of the year 2008-09 as income received.

Critically examine the matter and offer your comments. *(3 marks)*

- (c) *"Mona Industries Ltd. had incurred substantial expenditure on foreign tours undertaken by the chairman and managing director for setting-up of two new factories. The amount was claimed as a business expenditure." Comment.*

(3 marks)

- (d) *"Under certain circumstances, the Commissioner of Income-tax cannot revise the order of his subordinate authority under section 264." Explain.* *(3 marks)*

Answer 2(a)(i)

Incorrect

Revenues/incomes arising by way of collection of income tax are distributed between union and states. Proceeds of corporation tax are not divisible with the States vide Article 270(1) read with Article 4(a) of the Constitution of India.

Answer 2(a)(ii)

Correct

Under Section 28(iii) of the Income Tax Act, 1961 trade, professional or similar associations are liable to tax in respect of the income they derive from rendering of specific services to their members. Therefore, such entities even if they are non-profit making associations become liable to tax.

Answer 2(a)(iii)

Incorrect

Penalty for the repayment of deposit in contravention of Section 269T is laid down in Section 271E. An amount equal to the loan or deposit so repaid shall be levied as penalty by the Joint Commissioner.

Answer 2(b)

The opinion of the Accounts Department of Modern Ltd. is incorrect. The depreciated value of the building is of course to be brought into the books of accounts.

However, the equivalent amount viz. Rs.4.22 crores cannot be treated as income from the business or operations. By its very nature it is a capital receipt and is not a revenue income. The amount cannot be treated as a revenue receipt unless it is conclusively established that this represented deferred rent as the lease rent was unreasonably low. Further Modern Ltd. is not in the business of real estate to treat the benefit as incidental revenue receipt earned during the course of such business.

On similar facts, the Bombay High Court in *CIT v. Elphinstone Dye Works Pvt. Ltd.* 82 ITR 654 has held that the written down value of the building in such a situation can be treated only as a capital receipt.

Answer 2(c)

The amount is not allowable as an admissible expense of the company. The foreign tour of the C&MD was connected with the setting-up of two new factories. The expenses were of capital nature and not allowable as business expenditure under section 37. The position as stated above is in accordance with the decision of the Allahabad High Court in *Modern Industries Ltd. v. CIT* [1977 110 TR 855] which itself was based on the decision of Gujarat High Court in *CIT v. Saurashtra Cement and Chemical Industries Ltd.*

Answer 2(d)

The Commissioner of Income Tax (CIT) is empowered to order revision of an order of any authority sub-ordinate to him (as per Section 118) under the provisions of Section 264(1). He can pass the order suo moto or on the application by the assessee. Suo moto revision order can be passed only within one year of the date of order. In case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order was communicated to him or the date, on which he otherwise came to know of it, whichever is earlier. The Commissioner may admit an application made after the expiry of that period if he is satisfied by the sufficient cause shown to him. The revisional order passed under section 264 cannot be prejudicial to the interest of the assessee.

Following are the circumstances in which no revision can be made as per Section 264(4) :

- (i) If the order is appealable to the Commissioner of Appeals, such order cannot be revised until the time within which such appeal may be made expires. If an appeal has been made to the Commissioner (Appeals) revisional power cannot be exercised while the appeal is pending but it may be exercised after the appeal has been disposed of for the purposes of Section 264, the Commissioner (Appeals) is an authority subordinate to the Commissioner of Income Tax. Hence the order of Commissioner (Appeals) can be revised.
- (ii) If the order is appealable to the Commissioner (Appeals) or the Appellate Tribunal, revision power cannot be exercised until the time within which such appeal may

be made expires. If the assessee waives his right of appeal, the Commissioner may revise the order even before the expiry of time for appeal. But once the order has been made the subject of an appeal the revisional powers come to an end. If the Commissioner (Appeals) or the Appellate Tribunal refuses to entertain the appeal on the ground that it is time barred or grants permission to the appellant to withdraw the appeal, the order cannot be said to be subject of an appeal and the assessee would be entitled to apply to the Commissioner for revision.

Question 3

- (a) *A new 100% deduction has been introduced recently to encourage the business of operating and maintaining hospitals located anywhere in India, other than excluded areas, subject to specified conditions. Explain briefly those conditions. (5 marks)*
- (b) *"The assessing officer has no power to make adjustment of any kind to income returned by an assessee at the time of processing the return of income under section 143(1)." Critically examine the statement. (5 marks)*
- (c) *State the procedure to be followed in the following cases :*
 - (i) *Company seeks relaxation for admission of time-barred claims. (2 marks)*
 - (ii) *Company seeks the return of books seized in the course of search made under section 132. (3 marks)*

Answer 3(a)

Sub-section (11C) inserted in Section 80-IB by the Finance Act, 2008 with effect from 1st April, 2009 (Assessment Year 2009-10), grants deduction of 100% of profits and gains derived from business of operating and maintaining hospitals located anywhere in India other than the excluded areas on fulfilling the following four conditions :

- (i) The hospital is constructed and should start functioning in India during the period from 1st April, 2008 to 31st March, 2013.
- (ii) It has atleast 100 beds for patients;
- (iii) The construction is in accordance with the Regulations or By-laws of the local authority; and
- (iv) Report of Audit in the prescribed form certifying the correctness of claim for deduction is furnished along with the return of income.

Excluded areas' cover the areas comprising the urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmadabad, the districts of Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar and Gandhi Nagar and the City of Secunderabad.

The deduction will be available for a period of five consecutive assessment years, beginning with the initial assessment year i.e., assessment year relevant to the previous year in which the business of the hospital starts functioning.

Answer 3(b)

Prior to the amendments by the Finance Act, 2008, Section 143(1) did not contain

any provisions for making adjustment to the returned income for correcting any arithmetical error or internal inconsistencies.

A significant amendment has been made by the Finance Act, 2008 with regard to the procedure to be followed for summary assessment under section 143(1). As per the amended section 143(1), the total income or loss of an assessee shall be computed after making adjustments to the returned income in respect of the following :

- (i) Any arithmetical error in the return; or
- (ii) An incorrect claim, if such incorrect claim is apparent from any information in the return.

For the purpose of Section 143(1), "An incorrect claim apparent from any information in the return" means such claim on the basis of an entry, in the return of income :

- (i) of an item, which is inconsistent with another entry of the same or some other item in such return.
- (ii) in respect of which, information required to be furnished under the Income-Tax Act to substantiate such entry, has not been furnished; and
- (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may be expressed as monetary amount or percentage of ratio or fraction.

Answer 3(c)(i)

Section 119(2)(b) specifically empowers the CBDT to authorize any income-tax authority, other than a Commissioner (Appeals), to admit any application or claim for any exemption, deduction, refund or any other relief under the Act made by the assessee after the expiry of the time limit specified by or under the Act for the making of such application or claim and to direct the income-tax authority concerned to deal with the same on merits in accordance with law, ignoring the time limit laid down in the Act. The Board, however, shall make such authorization and direction, only if it considers that it is desirable or expedient so to do for avoiding genuine hardship in any case or class of cases and this may be done by the Board either by a general order or any special order. The company has to make an application addressed to the secretary CBDT. No particular form has been prescribed for this purpose.

Answer 3(c)(ii)

Where any books etc., seized in the course of a search made under section 132 of the Act are to be retained by the Assessing Officer for a period of more than thirty days from the date of the order of assessment under clause (c) of Section 158BC thereof, it is necessary for him to record in writing the reasons for their retention after the expiry of the period as above said and to obtain the approval of the Chief Commissioner or the Commissioner of Income Tax or the Director General or Director for the purpose. Once an order is passed authorizing such retention under section 132(8) it must be communicated to the assessee because the statutory right conferred on such person under section 132(10) would be completely lost to the party legally entitled to the books if he is not told when the order of approval was made and for what length of time. Section 132(10) provides that where the person legally entitled to the books of accounts

etc. seized, objects for any reason to the approval given under section 132(8) he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books etc. The application is to be addressed to the Secretary CBDT. There is no prescribed form for this purpose.

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) For the purpose of central excise, the following is a 'manufacture' —
 - (a) Filtration/purification of commercial grade castor oil
 - (b) Cutting and polishing of diamonds
 - (c) Testing and quality control
 - (d) Making coffee beans from raw coffee berries.
 - (ii) Under the central excise law, the following are not 'goods' —
 - (a) Immovable iron and steel structures
 - (b) Structures like bridges, lock gates, towers, trusses and column frames in their movable state
 - (c) Plates, rods, angles, sections, section tubes and the like in their pre-assembled or disassembled state
 - (d) PSC girders manufactured in casting yard and not at site and then taken for launch on sub-structure.
 - (iii) Levy of excise duty in respect of the following does not fall within the exclusive powers conferred on the Parliament/Union Government by the Constitution of India —
 - (a) Tobacco and other goods
 - (b) Medicinal and toilet preparations
 - (c) Medicinal and toilet preparations containing alcoholic liquor, opium or narcotics
 - (d) Alcoholic liquors for human consumption, opium and narcotic drugs.
 - (iv) In determination of the value of imported goods, the following costs are not to be added if they are not already included in the invoice price —
 - (a) Commission and brokerage
 - (b) Cost of containers which are treated as being one with the goods for customs purpose
 - (c) Buying commission
 - (d) Cost of packing whether labour or materials.

- (v) *The form for 'bill of entry' for warehousing is printed on —*
- (a) *White paper*
 - (b) *Yellow paper*
 - (c) *Green paper*
 - (d) *Light pink paper.*
- (vi) *For offences committed under sections 132 to 135 of the Customs Act, 1962, a court shall take cognizance —*
- (a) *Suo motu*
 - (b) *When it is brought to the notice of a court by anybody*
 - (c) *With the previous sanction of the Commissioner of Customs*
 - (d) *None of the above.*
- (vii) *An ad hoc exemption from customs duty to non-government organisation will be issued subject to condition —*
- (a) *That the imported goods will not be put to any commercial use*
 - (b) *That the imported goods will not be sold, gifted or parted by the importer in any manner*
 - (c) *That (a) and (b), as above, alongwith prior permission of the Ministry of Finance*
 - (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) *As per the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the term 'produced' includes _____.*
 - (ii) *Under section 13 of the Customs Act, 1962, duty is not payable on pilfered goods only in case where the goods are pilfered after the unloading and before the issue of _____.*
 - (iii) *Section 18 of the Customs Act, 1962 provides for _____ of duty.*
 - (iv) *Any goods on which import duty has not been paid and which are entered for exportation under section 74 of the Customs Act, 1962 shall be liable to _____ under section 113 of the Act.*
 - (v) *It follows from the definition of 'excise duties' that for anything to be liable to excise duties it must be goods and _____ and it must be produced or manufactured in India.*
 - (vi) *Recording of sound or other phenomena on audio or video tape _____ under excise law.*
 - (vii) *If the raw material is supplied on principal to principal basis (e.g. Bala Ltd. supplies raw materials to job workers), the supplier is _____ under excise law.*
 - (viii) *Under section 35(1), any person aggrieved by any decision or order passed under the Central Excise Act, 1944 by an officer lower in rank than a*

Commissioner may appeal to the Commissioner (Appeals) by filing an appeal within _____ from the date of communication of the order contested.

(1 mark each)

- (c) *Discuss the essential ingredients of the concept of 'manufacture' under the Central Excise Act, 1944 and as outlined by the Supreme Court in Union of India vs. Delhi Cloth and General Mills and others.* (5 marks)

OR

In the following events, state when does the taxable event occur in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of Garden Silk Mills Ltd. vs. Union of India; and Kiran Spinning Mills Vs. CC :

- (i) *Unloading of imported goods at the customs port;*
- (ii) *Date of entry into Indian territorial waters;*
- (iii) *Date on which the goods cross the customs barrier; and*
- (iv) *Date of presentation of bill of entry.* (5 marks)

Answer 4(a)(i)

- (d) Making coffee beans from raw coffee berries

Answer 4(a)(ii)

- (a) Immovable iron and steel structures

Answer 4(a)(iii)

- (d) Alcoholic liquors for human consumption, opium and narcotic drugs

Answer 4(a)(iv)

- (c) Buying Commission

Answer 4(a)(v)

- (b) Yellow Paper

Answer 4(a)(vi)

- (c) With the previous sanction of the Commission of Customs

Answer 4(a)(vii)

- (c) that (a) and (b) as above, alongwith prior permission of the Ministry of Finance.

Answer 4(b)

- (i) As per the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the term 'produced' includes **Grown, manufactured, mined** .
- (ii) Under section 13 of the Customs Act, 1962, duty is not payable on pilfered goods only in case where the goods are pilfered after the unloading and before the issue of **the order of clearance** .

- (iii) Section 18 of the Customs Act, 1962 provides for **Provisional assessment** of duty.
- (iv) Any goods on which import duty has not been paid and which are entered for exportation under section 74 of the Customs Act, 1962 shall be liable to **Confiscation** under section 113 of the Act.
- (v) It follows from the definition of 'excise duties' that for anything to be liable to excise duties it must be goods and **Excisable goods** and it must be produced or manufactured in India.
- (vi) Recording of sound or other phenomena on audio or video tape **shall amount to manufacture** under excise law.
- (vii) If the raw material is supplied on principal to principal basis (e.g. Bala Ltd. supplies raw materials to job workers), the supplier is **not manufacturer** under excise law.
- (viii) Under section 35(1), any person aggrieved by any decision or order passed under the Central Excise Act, 1944 by an officer lower in rank than a Commissioner may appeal to the Commissioner (Appeals) by filing an appeal within **Sixty days** from the date of communication of the order contested.

Answer 4(c)

Section 2(f) of the Central Excise Act, 1944 provides an inclusive definition of the term 'manufacture'. According to Section 2(f), "manufacture" includes any process :

- (i) incidental or ancillary to the completion of a manufactured product;
- (ii) which is deemed as a manufacturing process as specified in the Central Excise Tariff Act, 1985;
- (iii) which in relation to goods specified under Schedule III of the Central Excise Act, 1944 involves packing or repacking of such goods in a unit or container or labeling or relabeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

For Schedule III items valuation scheme based on retail price under Section 4A is applicable.

Manufacture of any product is through a series of manufacturing processes taking place in a sequence. At a particular stage after the necessary processes are completed the product emerging may be functional. However, a few more processes may be necessary to render the product saleable. Saleability is a crucial condition for deciding excisability. The processes which take place to render the product already functional to become saleable can be considered as "incidental or ancillary to the completion".

In the absence of an exhaustive definition of the term manufacture the principles laid down by judicial pronouncements provide guidance in determining what processes constitute manufacture.

The decision by the Supreme Court in *Union of India v. Delhi Cloth and General Mills and Others* (ELT-1977 J-199) is a land mark judgement. It was pronounced inter alia :

“Manufacture implies a change but every change is not manufacture;; and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be a transformation; a new and different article must emerge, having a distinct name, character or use”.

It may also be inferred from various judgments that mere value addition through a process should not tantamount to manufacture.

Answer to Alternate Question 4(c)

As per Section 2(23) of the Customs Act, 1962 import means bringing into India from a place outside India.

As per Section 2(27) “India” includes the territorial waters of India. The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate base line.

In *Chetan Kumar v. CC (1988 33 ELT Madras)* the High Court held that chargeability arises when the imported goods get mixed-up with the land mass of India and the chargeability takes place when the goods are unloaded.

In *Apar Pvt. Ltd. v. UOI 1985(22) ELT 644 the Bombay High Court* held that “the taxable event occurs no sooner the goods enter the territorial waters of India and does not postpone till they are actually off loaded on the land mass or till the goods are valued under section 14 or till the date for determining the rate of customs duty that should be levied under Section 15 arrives.....”

There were many conflicting judgements by different High Courts.

In *UOI v. Apar Pvt. Ltd. [1999(112) ELT 3]* the Supreme Court overruled the Full Bench decision of the Bombay High Court 1985 referred to above.

The Supreme Court held that the rate of duty and tariff valuation applicable to any imported goods shall be the rate and valuation in force on the date determined in accordance with Section 15(1) of the Customs Act as follows :

- (a) In case of goods cleared for home consumption the date of presentation of Bill of Entry under Section 46 or the date of grant of entry inwards to the vessel whichever is later.
- (b) In case of goods from bonded warehouse the date of actual removal from the warehouse.

In *Garden Silk Mills Ltd. v. UOI 1999 SC ELT 358 the Supreme Court* held the import of goods in India commences when the goods enter into territorial waters but continues and is completed when goods become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach customs barrier and BE for home consumption is filed .

In case of warehoused goods, the goods continue to be in customs hand. Hence import takes place only when goods are cleared from the ware house.

In *Kiran Spinning Mills v. C.C. 1999 (113) 753 SC*. The same three members Bench of the Supreme Court which decided *Garden Silk Mills* case held that import is completed only when the goods cross the customs barrier. The taxable event is the day of crossing the customs barrier and not on the date when the goods landed in India or had entered territorial waters of India.

In case of goods which are in the warehouse the customs barrier would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

Question 5

- (a) *Discuss in brief the essential features of the following under central excise law and give one example of each :*

- (i) *Specific rates of duty;*
- (ii) *Tariff values; and*
- (iii) *Duty based on MRP.* (2 marks each)

- (b) *An excisable product is covered under the provisions of the Standards of Weights and Measures Act, 1976 and falls in the category of 'specified goods' subject to excise duty on the basis of retail sale price. Following particulars are made available :*

MRP printed on the package is Rs.10,894 per unit. The price is inclusive of excise duty of 14% and education and secondary and higher education cess at the currently applicable rates as per the Finance Act, 2008.

Compute the assessable value, excise duty and cess payable if it is eligible for an abatement of 38%. (5 marks)

- (c) *Distinguish between conditions for availing CENVAT credit in respect of 'duty paid on inputs' and 'duty paid on capital goods'.* (4 marks)

Answer 5(a)(i)

Specific Rates of Duty under Central Excise Law

These are unit rates based on quantity. The base unit may be a kg. a centimeter, a tonne etc. Some examples are :

- Cigarettes millimeter (length)
- Cement tonne (weight)
- Marble slab Sq. M (Area)

Presently specific rates have been announced for : (a) cigarettes (length basis); (b) Matches (per 100 boxes/packs); (c) Sugar (per quintal); (d) Marble slabs and tiles (per sq m); (e) colour TV when MRP is not marked or when MRP is not the sole consideration (based on screen size in cm) (f) Cement (per tonne); (g) Molasses resulting from the clinkers extraction of sugarcane (per ton basis).

Answer 5(a)(ii)

Tariff Value : Duty as a percent of the Tariff Value Fixed under Section 3(2). Tariff value is a Notional Value.

Presently Tariff Values have been fixed for :

- (a) Pan masala packed in retail packs of upto 10 gms. per pack;
- (b) Tariff value for ready made garments falling under heading 61 to 62 has been prescribed @ 60% of retail sale price of such goods as specified on the package.

Answer 5(a)(iii)

Duty Based on MRP : Section 4A of the Central Excise Act empowers Central Government to specify goods on which duty is payable based on retail sale price. Important provisions are as follows :

- (a) The goods should be covered under provisions of Standards of Weights and Measures Act, 1976 or Rules;
- (b) Central Government has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the retail sale price as per section 4A(2).
- (c) While allowing such abatement Central Government shall take into account excise duty, sales tax and other taxes payable on the goods;
- (d) The retail sale price shall be the maximum price at which the goods i.e. excisable goods in packaged condition are sold to ultimate customer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law retail sale price is required to be declared without taxes and duties then the retail price shall be construed accordingly. [Explanation 1 to Section 4A].
- (e) If more than one retail sale price is printed on the same packing the maximum of such price will be considered the retail sale price. Explanation 2(a) to Section 4A. If different MRPs are printed on different packages for different areas each such price will be the retail sale price. [Explanation 2(c) to Section 4A];
- (f) Tampering, altering or removing MRP is an offence and goods are liable to confiscation Section 4A(4).

So far about 108 articles have been covered under this scheme e.g. chocolates in any form falling under 1806, biscuits falling under 19053219 manufactured with the aid of power, computer under 847130, refrigerators under 8418.10.

Answer 5(b)

Assessable value of the product for levying Central Excise duty on the basis of MRP value under section 4A of the Central Excise Act works out as follows :

- (i) MRP printed on the package = Rs.10894 per Unit.
- (ii) The above is inclusive of Central Excise duty @ 14% on Assessable Value and Education and Secondary and Higher Education Cess at the currently applicable rates—which are 2% and 1% on Central Excise duty respectively.

As an abatement of 38% is allowed, Assessable Value is 62% of MRP.

$$\begin{aligned}
 \text{(iii) (a) Central Excise duty} &= .14 = .14 \times .62 = 0.0868 \\
 \text{(b) Education Cess} &= .14 \times .02 = .0028 \times .62 = 0.001736 \\
 \text{(c) SAH} &= .14 \times .01 = .0014 \times .62 = 0.000868 \\
 &= \underline{0.089404} \\
 \text{Total} &= .1442 \times .62 = 0.089404
 \end{aligned}$$

- (iv) MRP for the purposes of Section 4-A after excluding the Central Excise Duty and Education Cess and SAH Education Cess

$$= \frac{10894}{1.0894} = 10,000$$

MRP = Rs.10,000 exclusive of duty and Education and SAH Education Cess

- (v) Abatement permitted @ 38% Rs. 3800
 (vi) Assessable Value for Central Excise Duty = Rs. 6200
 (vii) Central Excise duty @ 14% = Rs. 868
 (viii) Education Cess 2% of vii = Rs. 17.36
 (ix) SAH Education Cess 1% of vii = Rs. 8.68
 (x) Total of vii + viii + ix = Rs.894.04

Education Cess and SAH Education cess = Rs. 26.04.

Answer 5(c)

The distinction in availment of CENVAT Credit in respect of inputs and capital goods is as follows :

- (i) 100% of duty paid on inputs can be taken by the manufacturer and service provider immediately on bringing them in the factory premises-Rule 4(1);
- (ii) There is no compulsion that the credit must be taken immediately. There is no time limit for taking credit after bringing goods. But it cannot be taken before the goods are brought into the factory.
- (iii) A maximum of 50% only is allowed as credit on capital goods received in the factory/premises in the first financial year of purchase Rule 2(2)(a).
- (iv) However 100% credit is allowed in the following cases.
 - When the capital goods are cleared as such in the same financial year.
 - When additional duty of Customs under Section 3(5) of the Customs Tariff Act is paid by the manufacturer on capital goods imported.

Service provider is not all eligible to take credit on additional duty of customs paid under section 3(5) of the Customs Tariff Act.

Where 100% cannot be taken and only a part of the duty has been taken as credit the remaining balance of credit can be taken in the subsequent financial year if the capital goods are still in possession.

However, possession as a condition for availing the remaining credit in the next financial year is not applicable to the following capital goods.

Components, spares, accessories; refractories and refractory materials; moulds, dies and specified goods under Chapter 68 of CETA.

It is not necessary to purchase capital goods to get CENVAT Credit. Credit can be taken even on those obtained by lease, hire purchase, loan arrangement [Rule 4(3)].

Question 6

- (a) Write a note on 'compounded levy scheme' under the central excise law. (5 marks)
- (b) "Circulars of the Central Board of Excise and Customs cannot prevail over law laid down by the Apex Court." Examine the statement, considering the relevant provisions of the Central Excise Act, 1944 read with Article 141 of the Constitution of India and the relevant case(s) decided by the Apex Court. (5 marks)
- (c) "With the advent of VAT regime, the multiplicity of rates prevalent till then has been reduced to four broad categories." Elucidate. (5 marks)

Answer 6(a)

Compounded Levy Scheme : Rule 15 of Central Excise Rules provides that Central Government may by notification, specify the goods in respect of which the assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates. Central Government can specify procedure for payment, abatement allowable, interest and penalty payable etc.

This is termed as compound levy. It is devised for administrative convenience and a simplified scheme. It is an optional scheme.

Under the scheme the manufacturer has to pay prescribed duty for the specified period on the basis of factors relevant to production like the capacity of the machines used etc. After making the lump sum periodic payment the manufacturer does not have to follow any procedure of excise regarding storage and clearance of goods.

An assessee can opt out of the scheme to the normally applicable procedures but a hybrid procedure is not permitted.

The scheme is presently applicable to stainless pattas/patties and Aluminum circles. These articles are not eligible for SSI exemption. The scheme was applicable to panmasala and gutkha upto 30th June, 2008.

Answer 6(b)

This statement is based on the judgement of Supreme Court in case of Commissioner of Central Excise *Mumbai v. Hindustan Spinning & Weaving Mills Ltd. & Another* dated April 16, 2009.

Section 37B of the Central Excise Act, 1944, read with Article 141 of the Constitution of India, 1950 deals with the powers of the CBEC to issue various orders, instructions and directions to Central Excise & Customs Offices from time to time. Such orders, instructions, directions/circulars are binding in Law on the authorities under the respective statutes but they are not binding on quasi-judicial authorities like Tribunal, High Courts or Supreme Court. Circulars of Board cannot prevail over law laid down by Apex Court.

The *Apex Court in CCE v. Ratan Melting & Wire Industries (2008) 13 SCC 1* has held that circulars and instructions issued by Board are no doubt binding in Law on authorities under respective statutes, but when the Supreme Court or High Court declares law on question arising for consideration, it would not be appropriate for the Court to direct that circular should be given effect to and not the views expressed in a decision of the Supreme Court or High Court. Moreover, to lay emphasis on circular would mean that valuable right of challenge would be denied to the assessee and there would be no scope for adjudication by the Supreme Court or High Court.

Answer 6(c)

In contrast to the multiplicity of rates under erstwhile Sale Tax Laws, the VAT regime has four broad rates other than the 0% for exempted goods in the nature of unprocessed agricultural goods and goods of social importance. The four categories are as follows :

- (i) 1% for precious and Semi-precious metals;
- (ii) 4% for inputs used for manufacturing and declared goods;
- (iii) 20% for demerit/luxury goods.
- (iv) Rest of the commodities are taxed at a Revenue Neutral Rate of 12.5%.

Question 7

- (a) *Following particulars are available in respect of certain goods imported into India: FOB price : US\$30,000*

Exchange rate :

Notified by RBI Rs. 50 = US\$1

Notified by CBEC Rs. 48 = US\$1

Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. (5 marks)

- (b) *A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available :*

CIF value of the consignment : US\$25,000

Quantity imported : 500 kgs.

Exchange rate applicable : Rs.50=US\$1

Basic customs duty : 20%

Education and secondary and higher education cess as applicable as per the Finance Act, 2008.

As per the notification, the anti-dumping duty will be equal to the difference

between the cost of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.

Assume that only 'basic customs duty' (BCD) and education and secondary and higher education cess are payable. (5 marks)

- (c) Anand Ltd. has imported certain goods which were confiscated on the grounds that the appellant had mis-declared some goods in terms of value and some were found mis-declared in terms of description, value and quality and that personal penalty was imposed on the company and its directors. Critically examine the above facts and the justifiability of the action taken, having regard to relevant recent judicial rulings. (5 marks)*

Answer 7(a)

In the information given FOB Price is = 30,000 US Dollars.

For the purpose of determination of Assessable value CIF price/cost forms the basis. Information regarding the cost of freight, that is cost of transportation upto the Indian Port is not available. As such 20% of FOB Price is to be added towards cost of transportation as per Rule 10(2)(a) and (i) proviso of the Customs valuation (Determination of Value of Imported Goods) Rules, 2007. Cost of insurance is not available. As such 1.125% of FOB Price is to be added as per Rule 10(2)(c) and proviso (iii).

In addition loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation as Rule 10(2)(b) should be added. These charges otherwise known as landing charges shall be 1% of (FOB Value + Transportation Cost + Insurance cost) in other words 1% of CIF Value under proviso (ii) under Rule 10(2).

As per Explanation (a) to Section 14(2) the rate of exchange as determined by the CBEC is to be adopted for conversion into Indian rupees.

Assessable value in the case referred is worked out in accordance with the above provisions.

FOB value	30,000	US dollars
Add : 20% towards Transportation	6,000	US dollars
	<u>36,000</u>	US dollars
Add : Insurance @ 1.125% of CF cost	405	US dollars
	<u>36,405</u>	CIF cost in US dollars

Converted into Rupees as notified by CBEC $36,405 \times 48 = 1747440$ INR

CIF Value = 1747440 INR

Landing charges 17474.4 INR

Assessable Value 1764914.40 INR

Answer 7(b)**Duty liability on the imported goods**

1. CIF cost of 500 Kgs.	US dollars 25,000
2. CIF cost @ 1 US dollar = Rs. 50 INR	Rs.12,50,000
3. Add Landing charges @ 1%	12,500
4. Assessable Value	12,62,500
5. Basic customs Duty @ 20% of (4)	2,52,500
6. Education Cess @ 2% of (5)	5050
7. SAH Education Cess @ 1% of (5)	2525
8. Liability on account of normally applicable duties and cess	
Total of 5 + 6 + 7	2,60,075
Computation of Anti-dumping duty.:	
Landed cost (4 + 8)	15,22,575 INR
Rate of Commodity/goods as per	
Anti dumping Notification per Kg. for 500 Kgs.	US dollars 70
Quantity imported 500 x 70	US dollars 35,000
Value as per notification	US dollars 35,000
Exchange rate 1 US dollar = Rs.50 INR	
A Value in Rupees	17,50,00 INR
Landed cost of the imported gods as computed earlier	15,22,575 INR
B Anti-Dumping duty A – B =	2,27,425 INR

Answer 7(c)

The case study is based on the Supreme Court judgement in the case of *Varsha Plastic Pvt. Ltd. & Another v. Union of India and others* dated 15.2.2009.

Section 151A read with section 14 of the Customs Act, 1962 is relevant here. The burden is on customs authorities to establish the case of mis-declaration of goods or valuation or that the declared prices did not reflect the true transaction value.

In the above case, the goods imported by the appellants were confiscated on the ground that the appellant had mis-declared some goods in terms of value and some were found mis-declared in terms of description, value and quality and also imposed personal penalty on the firm and its directors. The appellants, instead of assailing the order in original in a statutory appeal approached the High Court by filing a special civil

application *inter alia* challenging the constitutional validity of the provision of Section 151A and also put in issue the legality and validity of the provisions of Section 151A and also put in issue the legality and validity of the standing Order No.7493/99 issued by the Chief Commissioner of Customs, Mumbai with regard to valuation of plastic items. The High Court did not find any merit in so far as the constitutional validity of Section 151A was concerned. As regards to the question on standing order the High Court held that the impugned standing order is to be taken only as assistance in exercise of quasi-judicial power of determining the value for the purpose of levy of customs duty by the concerned authorities and therefore it was not liable to be struck down. The controversy before the Supreme Court was confined to the legality and validity of the Standing Order No.7493/99.

The Supreme Court observed that once nature of goods has been mis-declared, the value declared on the imported goods becomes unacceptable. It does not in any way affect the legal position that the burden is on the customs authorities to establish the case of mis-declaration of goods or valuation or that the declared price did not reflect the true transaction value.

PART C

Question 8

Attempt any four of the following :

- (i) *Several Indian companies are migrating abroad to minimise their tax obligations and to avail of lower rates of tax. Discuss with reference to our current levels of tax on incomes.* (5 marks)
- (ii) *Explain how the arm's length price in relation to an international transaction is computed under the comparable uncontrolled price method as per Rule 10B of the Income-tax Rules, 1962.* (5 marks)
- (iii) *Discuss the modes of granting relief under avoidance of double taxation agreements and the effect of such agreements between the Government of India and the governments of other countries under section 90A of the Income-tax Act, 1961.* (5 marks)
- (iv) *Explain the salient features of the tax incentives available to foreign institutional investors (FIIs) under the provisions of section-115AD of the Income-tax Act, 1961.* (5 marks)
- (v) *Explain the powers of the authority for advance rulings in regard to rejection of an application and modification of an order.* (5 marks)
- (vi) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
 - (a) *The credit for taxes paid _____ should be allowed in the year in which the foreign taxed income is _____ in India.*
 - (b) *Under the income test, a foreign corporation is considered a passive foreign investment company (PFIC) if _____ percent or more of the foreign corporation's gross income for the taxable year consist of passive income.*
 - (c) *Organisation for Economic Co-operation and Development - Model Convention (OECD-MC) defines double taxation as 'the imposition of*

_____ in two (or more) States on the same tax payer in respect of the same subject matter and for identical periods'.

(d) Rule 10A(a) dealing with the Transfer Pricing defines an 'uncontrolled transaction' to mean a transaction between enterprises other than _____, whether resident or non-resident.

(e) Anti-dumping and countervailing duties are imposed under the _____ Act. (1 mark each)

Answer 8(i)

The statement given reflects the view that the level of corporate taxes in India are comparatively higher than those prevalent in some other foreign countries.

The present rates of corporate tax as applicable for the Assessment Year 2009-10 are as follows :

	Domestic Companies	Foreign Companies
1. Basic Rate	30%	40%
2. Surcharge applicable only if the taxable income is more than Rs.1 crore in the Previous year.	10%	2.5%
3. Education Cess	2%	2%
4. Secondary and Higher Education	1%	1%
5. Effective Rate of tax	33.99%	42.23%

In respect of foreign companies, some specified categories of income such as royalty, fees for technical services etc. are taxed at a special rate of 10%. The final liability of a foreign company will depend on the applicability of the Double Taxation Avoidance Agreement between India and the foreign country to which the company belongs if any. The rates prescribed in the DTAA or the normal rates prescribed under the Indian Income Tax Act whichever is more beneficial to the assessee shall be made applicable.

Royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after 31st March 1961 but before 1.4.1976 or fees for rendering technical services received by Government or Indian concern in pursuance of an agreement made by it with the Government or Indian concern after 29.2.1964 but before 1.4.1976 and where such agreement has, in either case been approved by the Central Government other than domestic companies are liable for a basic rate of 50% + Surcharge 2.5% + Education Cess 2% + SAH Education cess 1% and the effective rate works out to 52.75%.

The effective rates are too high compared with other tax jurisdictions abroad. Therefore, some Indian companies are going abroad or considering to do so.

The relatively high effective rate of tax also acts as a disincentive in attracting foreign investments and technical services etc. The foreign companies presently operating

in India may also consider migrating to other countries which provide for more favourable tax jurisdiction.

Answer 8(ii)

As per Section 92C of the Income Tax Act, 1961 the arm's length price in relation to an international transaction shall be determined by any of the following methods :

- (a) Comparable uncontrolled price method;
- (b) Resale Price Method;
- (c) Profit split method;
- (d) Cost plus method;
- (e) Transactional Net Margin Method;
- (f) Such other method as may be prescribed by the Board under Rule 10B

Out of the above the most appropriate method shall be adopted having regard to the nature of transaction or class of transactions or class of associated persons or functions performed. Comparable uncontrolled price method is one of the methods prescribed under Rule 10B of the IT Rules. The salient features of the method are as follows :

- (i) The price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified;
- (ii) Such price is adjusted to account for, differences, if any between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the prices in the open market.
- (iii) The adjusted price arrived at under such clause (ii) is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction :

	<i>Amount (Rs.)</i>
(1) Pricing of an unrelated party transaction	X
(2) Less : Adjustments made for related party Specific transaction	Y
(3) Pricing of an unrelated transaction	X – Y
(4) Pricing of the related party transaction	Z

Compare 3 and 4

If 4 is greater than 3 then ALP is 4 i.e. Z

If 3 is greater than 4 then ALP is 3 i.e. X – Y.

The most important aspect of this method is the identification of an identical transaction, in a situation where a price is charged for product or service between

unrelated parties. While applying the method, the comparability between controlled and uncontrolled transactions should not be only judged from the comparability of the product but should also take into consideration the effect on price of other broader business functions. Even minor differences in contractual terms, or economic conditions, geographical areas, risks assumed, functions assumed etc. could affect the amount charged in an uncontrolled transaction.

Answer 8(iii)

Modes of Granting relief under Avoidance of Double Taxation Agreements

Generally there are two modes viz : (i) exemption method and (ii) tax credit method.

Under exemption method a particular income is taxed in one of the two countries.

Under tax credit method an income is taxable in both the countries in accordance with their tax laws read with the ADT Agreement. However, the country of residence of the tax payer allows him credit for the tax charged thereon in the country of source against the tax charged on such income in the country of residence.

In the ADT Agreements entered into by India a combination of both the methods is provided.

The effect of an ADT agreement is as follows :

- (a) If no tax liability is imposed under the Act the question of resorting to the agreement would not arise, no provision of the agreement can possibly fasten a tax liability not imposed by the Act.
- (b) If a tax liability is imposed by the act the agreement may be resorted to for nullifying or reducing it.
- (c) In case of difference between the provisions of the Act and of the agreement the provisions of the agreement prevail over the provisions of the Act and can be enforced by the appellate authorities and the Courts.

Section 90A has been inserted under the Finance Act, 2006 with effect from 1.6.2006. Section 90A provides for relief in respect of agreements entered into between a specified association in India with any specified association outside India. The Central Government may by notification in the Official Gazette make necessary provision for :

- (a) adopting and implementing such agreement, for double taxation relief;
- (b) avoidance of double taxation;
- (c) exchange of information;
- (d) the prevention of avoidance of evasion of tax; or
- (e) the recovery of tax

Answer 8(iv)

Section 115AD provides for special rates of Income tax to Foreign Institutional Investors in respect of the following incomes.

- (a) Income (other than dividend covered under section 115-O) in respect of securities

listed in a recognized stock exchange in India (other than units covered under section 115AB

Special Rate Applicable 20%

- (b) Any short-term capital gain on transfer of securities covered under section 111A

Special Rate Applicable 10%

Other Securities

Special Rate Applicable 30%

- (c) Long-term Capital gains arising there from

Special Rate Applicable 10%

Where the gross total income of FII

- (i) Consists only of income in Clause (a) Sub-section (1) no deduction shall be allowed to it under Sections 28 to 44C or Clause (i) Clause (iii) of Section 57 or under Chapter VI-A.
- (ii) Includes any income referred to in Clause (a) or Clause (b) of Sub-Section (1) the gross total income shall be reduced by the amount of such income and the deductions under chapter VIA shall be allowed as if the gross total income as so reduced were the gross total income of the FII.

Answer 8(v)

The Authority for Advance Ruling (AAR) shall not allow an application when the questions raised in the application relate to the following :

- (i) if it is already pending before any income-tax authority or Appellate Tribunal or Court; or
- (ii) if it involves the determination of fair market value of any property; or
- (iii) it relates to a transaction or issue which is designed prima facie for the avoidance of Income Tax

Modification of order by AAR : Where the authority finds suo moto or on a representation made to it by the applicant or the Commissioner or otherwise, but before the ruling pronounced by the authority has been given effect to by the Assessing Officer, that there is a change in law or facts on the basis of which the ruling was pronounced, it may by order modify such ruling in such respects as it considers appropriate, after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

Answer 8(vi)

- (a) The credit for taxes paid **Overseas** should be allowed in the year in which the foreign taxed income is **doubly taxed** in India.
- (b) Under the income test, a foreign corporation is considered a passive foreign investment company (PFIC) if **75** percent or more of the foreign corporation's gross income for the taxable year consist of passive income.

- (c) Organisation for Economic Co-operation and Development - Model Convention (OECD-MC) defines double taxation as 'the imposition of **Comparable Taxes** in two (or more) States on the same tax payer in respect of the same subject matter and for identical periods'.
 - (d) Rule 10A(a) dealing with the Transfer Pricing defines an 'uncontrolled transaction' to mean a transaction between enterprises other than **Associated Enterprises**, whether resident or non-resident.
 - (e) Anti-dumping and countervailing duties are imposed under the **Customs** Act.
-