

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 2010-11, 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) There is no obligation on the part of the assessee to pay advance tax during financial year 2009-10 if the advance tax payable as computed under section 209 is less than —
 - (a) Rs. 7,500
 - (b) Rs. 5,000
 - (c) Rs. 10,000
 - (d) None of the above.
 - (ii) The levy of minimum alternate tax (MAT) under section 115JB in case of a corporate assessee at the specified percentage of book profit is @ —
 - (a) 5%
 - (b) 15%
 - (c) 10%
 - (d) None of the above.
 - (iii) Any expenditure on scientific research on in-house research and development facility incurred by a company engaged in the production or manufacture of any article not covered by Schedule XI of the Income-tax Act, 1961 is eligible for weighted deduction of —
 - (a) 125%
 - (b) 150%
 - (c) 110%
 - (d) None of the above.
 - (iv) Failure to keep, maintain or retain books of accounts, etc., as required under section 44AA will attract minimum and maximum penalty of —
 - (a) Rs. 25,000 and Rs. 25,000 respectively
 - (b) Rs. 25,000 and Rs. 1,00,000 respectively
 - (c) Rs. 25,000 and Rs. 50,000 respectively
 - (d) None of the above.

- (v) *Fee for filing an appeal under section 249(1) to the Commissioner (Appeals) when the assessed income is more than Rs.2 lakh is —*
- (a) *Rs.250*
(b) *Rs.500*
(c) *Rs.1,000*
(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) *While making an appeal to the Tribunal against order of the Commissioner of Income-tax (Appeals), the requisite documents shall be sent in _____.*
- (ii) *An application of fitness for appeal to the Supreme Court has to be made within _____ days from the date of High Court's judgment.*
- (iii) *Where the appeal to the Commissioner (Appeals) under section 246A relates to any assessment or penalty order, the appeals have to be presented within _____ days of the date of service of the notice of the demand relating to that assessment or penalty order.*
- (iv) *A minimum penalty of Rs. _____ per day for the days of default shall be levied upon failure to furnish annual information return.*
- (v) *The newly introduced section 144C envisages an alternate dispute resolution mechanism by empowering the CBDT to constitute a _____ for this purpose.* (1 mark each)
- (c) *Discuss briefly the provisions under section 4(l)(a)(ii) of the Wealth-tax Act, 1957 regarding assets held by a minor child.* (5 marks)

Answer 1(a)

- (i) (c) Rs.10,000
(ii) (b) 15%
(iii) (b) 150%
(iv) (a) Rs.25,000 and Rs.25,000 respectively.
(v) (c) Rs.1,000

Answer 1(b)

- (i) While making an appeal to the Tribunal against order of the Commissioner of Income-tax (Appeals), the requisite documents shall be sent in **Triplicate** .
- (ii) An application of fitness for appeal to the Supreme Court has to be made within **60** days from the date of High Court's judgment.
- (iii) Where the appeal to the Commissioner (Appeals) under section 246A relates to any assessment or penalty order, the appeals have to be presented within **30** days of the date of service of the notice of the demand relating to that assessment or penalty order.

- (iv) A minimum penalty of **Rs. 100** per day for the days of default shall be levied upon failure to furnish annual information return.
- (v) The newly introduced section 144C envisages an alternate dispute resolution mechanism by empowering the CBDT to constitute a **Dispute Resolution Panel** for this purpose.

Answer 1(c)

As per Section 4(1)(a) of the Wealth Tax Act, 1957, assets held by the minor child shall be included in the net wealth of that parent, whose net wealth (excluding the assets of the minor Child) is greater. However, the following assets shall not be included in the net wealth of the parent and would be taxable in the hands of the minor only.

- (i) Assets held by minor child suffering from any disability specified under section 80U of the Income Tax Act, 1961.
- (ii) Assets held by a minor married daughter.
- (iii) Assets acquired by a minor child out of the following income:
 - (a) Income from manual work done by him.
 - (b) Income from any activity involving application of his skill, talent or specialized knowledge or experience.

Further, where the marriage of the parents does not subsist then the assets of minor child will be clubbed in the net wealth of the parent who maintained the minor child in the previous year as defined in the Income Tax Act, 1961.

Question 2

- (a) *State, with reasons in brief, whether the following statements are true or false, having regard to the provisions of the relevant direct tax laws :*
 - (i) *A foreign company may be treated as domestic company under the Income-tax Act, 1961.*
 - (ii) *A belated return of income can be filed after due date but within six months from the end of the relevant assessment year.*
 - (iii) *Any citizen of India who holds any wealth outside India is liable to pay wealth-tax on his foreign wealth.*
 - (iv) *It is mandatory for a person to whom the provisions of section 44AB are applicable to pay tax electronically, and it may be paid from the account of any other person.*
 - (v) *Where an appellate authority accepts the contention of the tax payer and allows the appeal, there lies no further appeal by the assessee against that order.* (2 marks each)
- (b) *“With the abolition of fringe benefit tax effective from assessment year 2010-11, the actual tax burden on fringe benefits’ is completely eliminated.” Do you agree?* (2 marks)
- (c) *Discuss the allowability of depreciation under section 32 read with section 43,*

where a non-operating plant and machinery is a part of block of assets and the said block of assets is used for the purpose of business. (3 marks)

Answer 2(a)

- (i) **True** : A foreign company shall become a domestic company if it has made arrangements for the declaration and payment of dividends in India which is payable out of domestic income.
- (ii) **False** : A belated return of income can be filed even after due date but maximum within one year from the end of the relevant assessment year or before the completion of assessment whichever is earlier.
- (iii) **False** : Any citizen of India who is also resident and ordinary resident in India has to pay wealth tax on his foreign wealth.
- (iv) **True** : The CBDT has vide circular No.5/2008 dated 14.07.2008 has clarified that an assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank.
- (v) **True** : When the contention of the tax payer is accepted and the appellate authority allows the appeal, no scope for further appeal by the assessee against that order is available to the assessee, except in case of partial allowance of appeal.

Answer 2(b)

No, The tax burden has been shifted from the employer to the employee. The employer instead of paying FBT would now have to deduct tax at source from the employees in respect of certain Fringe Benefits including ESOPS and contribution to superannuation fund in excess of the prescribed limit. These would now be taxed as perquisite in the hands of the employees, as the scope of the term 'perquisites' under Section 17(2) has been expanded to cover such benefits.

Answer 2(c)

Facts : The facts of this case are similar to that of *CIT v. Bharat Aluminium Co. Ltd.* [2009-TIOL-619-HC-DEL]. In this case the High Court held that

- (i) The rationale and purpose for which the concept of block of asset was introduced by the amendment in the provisions of the Act, as reflected in the circular dated 23.09.1988 of CBDT plays a vital part.
- (ii) The intention behind this provision is apparent. Once various assets are clubbed together and they become block and assets within the meaning of Section 2(11), and for the purpose of depreciation, it is one asset. Individual assets lose their identity from that very moment and become inseparable part of block of assets in so far as calculation of depreciation is concerned.
- (iii) Once this scheme contained in the aforesaid provisions is understood and appreciated, it is not possible to accept the contention that unless a particular

asset is used for the purpose of business or profession, depreciation is not allowed. However, the expression "used for the purpose of business" when applied to block asset would mean use of block of assets and not any specific building, machinery, plant or furniture in the block of asset as individual assets have lost their identity after becoming inseparable part of the block asset.

Question 3

- (a) *The book profits of a company in the previous year 2009-10 computed in accordance with section 115JB is Rs.15 lakh. If the total income computed for the same period as per the provisions of the Income-tax Act, 1961 is Rs.3 lakh, calculate the tax payable by the company in the assessment year 2010-11 and also indicate whether the company is eligible for any tax credit. (5 marks)*
- (b) *What penalties can be imposed under the -Income-tax Act, 1961 in the case of following defaults :*
- (i) *Failure to furnish return of income under section 139; and*
- (ii) *Failure to get accounts audited under section 44AB. (5 marks)*
- (c) *Distinguish between 'tax planning' and 'tax management'. (5 marks)*

Answer 3(a)

Computation of Tax Payable by the Company for the Assessment Year 2010-11

- (i) Tax on total income as computed under Income Tax Act:
- | | |
|---------------------|------------|
| 30% of Rs. 3,00,000 | Rs. 90,000 |
|---------------------|------------|
- (ii) Income Tax at the rate of 15% of the book profits
- | | |
|---------------------|--------------|
| 15% of Rs.15,00,000 | Rs. 2,25,000 |
|---------------------|--------------|

In the above case tax payable on total income is Rs.90,000 while 15% tax on book profit is Rs. 2,25,000. Since tax payable on total income is less than 15% on book profit, therefore the company is liable to pay MAT.

Tax Payable 15% of Rs.15 lac =	Rs. 2,25,000
Add Surcharge	Nil
Add Education Cess 2%	4,500
Add SHEC @ 1%	2,250
Total Tax Payable	<u>Rs. 2,31,750</u>

Thus, the company is liable to pay MAT Rs. 2,31,750. However, the excess tax paid i.e. (Rs. 2,25,000 – 90,000) Rs.1,35,000 will be eligible for tax credit and can be carry forward for ten succeeding assessment years for set-off against the tax payable on the total income during such period. If the credit is not so set-off it shall lapse.

Answer 3(b)(i)**Failure to furnish return of income under Section 139**

Explanation 3 to Section 271 provides that if return is not filed voluntarily under Section 139(1) but the assessee had taxable income, he will be liable to penalty. The concealment of income will be applicable if the following conditions are satisfied :

- (a) The assessee, whether or not assessed earlier, fails without reasonable cause, to furnish the return of his income which he was required to furnish under section 139 within the period specified in Section 153(1).
- (b) No notice has been issued to him either under Section 142(1) or 148.
- (c) The Assessing Officer/Commissioner (Appeal) is satisfied that the person has taxable income in the relevant assessment year;
- (d) The taxable income of such assessment year shall be deemed to be the concealed income even if such person furnishes a return at any time after the expiry of the period in the pursuance of a notice under Section 148.

Penalty : Minimum penalty is 100% of the tax sought to be evaded and maximum 300% of such amount.

Answer 3(b)(ii)**Failure to get accounts audited under Section 44AB (Section 271B)**

If an assessee fails to get accounts audited or to furnish a report of such audit as required by Section 44AB, a penalty will be imposed by the assessing officer. The minimum penalty shall be 0.5% of the total sales, turnover or gross receipts as the case may be or Rs.1,00,000, whichever is less. However, no penalty under Section 44AB will be imposed, if the assessee has already paid penalty under Section 44AA for non-maintenance of books of account. [*Ram Parkash C. Puri v. CIT* (2001) 117 Taxman 154 (Pune)].

Answer 3(c)

Tax planning and Tax Management seem to be similar in approach but these two activities can be differentiated on following grounds:

- (i) Tax planning is a wider term which includes tax management while tax management is a narrower term;
- (ii) The aim of the tax planning is to minimize tax incidence while management refers to the compliance with statutory provisions of the law.
- (iii) Tax planning is not required for every person while tax management is essential for every person.
- (iv) Tax planning helps in decision making process while tax management-helps in complying with the conditions for effective decision making and compliance with law.
- (v) Tax planning involves comparison of various alternatives before selecting the

best one while tax management involves maintenance of accounts in prescribed formats, filing of returns, payment of tax, deduction of tax at source etc. as per the legal requirements.

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 charging excise duty, 'goods' must fulfill following conditions —
 - (a) It must be moveable
 - (b) It must be marketable
 - (c) It must be specified in the central excise tariff
 - (d) All of the above.
 - (ii) In the case of products covered by maximum retail price (MRP) specifications, the assessable value will be calculated on the basis of —
 - (a) Transaction value
 - (b) MRP Less abatement
 - (c) MRP
 - (d) Percentage of tariff value.
 - (iii) The CENVAT credit can be carried forward and utilised upto —
 - (a) One year
 - (b) Five years
 - (c) Ten years
 - (d) No time limit.
 - (iv) Warehousing facility is not availed of for the following reasons —
 - (a) The importer may not require the goods immediately
 - (b) The importer wants to avoid heavy demurrage charges imposed by the port
 - (c) The importer may not have enough funds to make payment of duty immediately
 - (d) None of the above.
 - (v) Under Section 25(1) of the Customs Act, 1962, an ad hoc exemption cannot be granted to the following items —
 - (a) Life saving drugs
 - (b) Article imported for handicapped persons
 - (c) Import of software
 - (d) Import by Indian Navy.

(1 mark each)

(b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*

- (i) *Service tax is levied on services provided within the territory of India including territorial waters of India extending upto _____ (under International Sea Act).*
 - (ii) *'Labelling or re-labelling' of containers and re-packing from bulk packs to retail packs of natural or artificial mineral- waters shall amount to _____.*
 - (iii) *When the goods manufactured are not sold but are re-used in the factory for the manufacture of other articles, the value for the purpose of excise shall be _____ of the cost of production.*
 - (iv) *As per Section 13 of the Customs Act, 1962, duty is payable at the rate of _____ if any goods are pilfered after the unloading and before order of clearance.*
 - (v) *If the goods are re-imported within one year from the date of exportation, an application for refund of duty shall be made within _____ from the date on which proper officer makes an order of clearance. (1 mark each)*
- (c) *Bharat Export Corporation gets its product manufactured on job work basis from Softex Ltd., an independent processor. The details of the transactions are as follows :*

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Cost of materials sent to job worker for processing</i>	<i>25,000</i>
<i>Processor's charges (including Rs.7,000 as processing charges and Rs.5,000 as its profit)</i>	<i>12,000</i>
<i>Transport charges for receiving goods at the premises of the processor</i>	<i>1,000</i>

After processing, the goods, are sold by Bharat Export Corporation at Rs.58,000 from the premises of Softex Ltd. Determine the assessable value of the goods under Section 4 of the Central Excise Act, 1944. (5 marks)

- (d) *Explain the provisions for claiming drawback of duty paid on imported goods when they are re-exported. (5 marks)*

Answer 4(a)

- (i) (d) All the above
- (ii) (b) MRP less abatement
- (iii) (d) No time limit
- (iv) (d) None of the above
- (v) (c) Import of software.

Answer 4(b)

- (i) Service tax is levied on services provided within the territory of India including territorial waters of India extending upto **12 nautical miles** (under International Sea Act).
- (ii) 'Labelling or re-labelling' of containers and re-packing from bulk packs to retail packs of natural or artificial mineral- waters shall amount to **Manufacture**.
- (iii) When the goods manufactured are not sold but are re-used in the factory for the manufacture of other articles, the value for the purpose of excise shall be **110%** of the cost of production.
- (iv) As per Section 13 of the Customs Act, 1962, duty is payable at the rate of **Zero/ Nil** if any goods are pilfered after the unloading and before order of clearance.
- (v) If the goods are re-imported within one year from the date of exportation, an application for refund of duty shall be made within **Six months** from the date on which proper officer makes an order of clearance.

Answer 4(c)

As per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where the excisable goods are produced or manufactured by a job worker, on behalf of a 'Principal Manufacturer' and the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer. Hence, in the given case, the assessable value of the goods shall be Rs.58,000.

Answer 4(d)**Drawback of Customs duty allowed on re-export of duty paid on imported goods [Section 74(1)]**

When any goods capable of easy identification as imported goods into India on which duty has been paid on importation are entered for export and the proper officer makes an order of clearance.

- (i) Under Section 51 for cargo permitting clearance and loading of the goods for exportation; or
- (ii) Are to be exported as baggage and the owner of such baggage makes a declaration under Section 77 for the purpose of clearing it and the proper officer makes an order permitting clearance of the goods for exportation; or
- (iii) Under Section 82, the goods are entered for export by post, then, 98% of such duty will be refunded as draw back provided the goods are entered for export within 2 years from the date of payment of duty on the importation thereof or any extended period granted.

Question 5

- (a) *Examine briefly, whether the process of commercial duplication by which a blank CD is transformed into software loaded marketable CD constitutes*

manufacturing or processing of goods ? Support your answer with recent judicial pronouncement.

- (b) *Define the term 'classification' and indicate briefly its salient features in the context of excise law.* (5 marks)
- (c) *What are the conditions for claiming refund of import duty under the newly inserted Section 26A of the Customs Act, 1962 ?* (5 marks)

Answer 5(a)

Facts : Assessee imported Master Media of the software from Oracle Corporation, U.S.A. which was duplicated on blank discs, packed and sold in the market. The Question arose whether process by which blank Compact Disc (CD) is transformed into software loaded marketable disc constitutes “manufacture or processing of goods”.

The Hon'ble Supreme Court in the case of *CIT v. Oracle Software India Ltd.* held the term “manufacture” implies a change, but, every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation. However, this test of manufacture needs to be seen in the context of the process adopted by the assessee for duplication of software. If an operation/ process renders a commodity or article fit for use for which it is otherwise not fit, the operation/ process falls within the meaning of the word “manufacture”. Applying this test, as the assessee has undertaken an operation which renders a blank CD fit for use for which it was otherwise not fit, the duplicating process constitutes ‘manufacture’ u/s 80IA(12)(b) of the Income Tax Act, 1961.

Hence it can be said that it constitutes ‘manufacture’ under the Excise Law also.

Answer 5(b)

Classification is the process by which identification of excisable goods can be made. Under the Central Excise, the goods are identified by their code numbers called as classification numbers. Ascertaining the classification number is necessary to:

- Determine excisability of the goods manufactured;
- Finding out rate of duty applicable to such excisability;
- Establish dutibility by checking up whether any exemption is available under Section 5A of Central Excise Act, 1944, or any new levy or increase of duty is there under Section 3 of Central Tariff Act, 1985;
- Proper classification of goods ensures smooth functioning of Excise duty administration and avoids disputes.

Salient Features of Classification

- Classification is based on eight digits system known as “Harmonised System of Nomenclature”. First two digits represent chapter number, next two digits-Heading Number and the last two digits show the Sub-heading numbers of the goods in question. If two more digits are added for sub-classification, it is termed as Tariff item.
- Chapter No. and Heading No. may be common but the sub-heading is unique.

- Schedule 1 of the Central Excise Tariff Act, 1985 as amended with effect from 28th March, 2005 has four columns viz : (i) Tariff Item (ii) Description of goods (iii) Unit (iv) Rate of duty;
- The goods are so grouped that they are classified beginning with raw material and ending with finished goods under the same Chapter.
- There are 20 Sections in the Schedule, each section is divided into a number of Chapters and each chapter is further divided into Headings and Sub-headings.
- There are Section notes, Chapter notes to enable better understanding and proper application which have binding effect.
- There are also rules provided for interpretation in case of need. If the rules cannot be applied successfully, then the principles evolved by the Courts may be resorted to.
- In case of dispute over correctness of classification number, the burden of proof is on the department (*Hindustan Ferodo Ltd., S.C.*).

Answer 5(c)

Under Section 26A, effective from 19.08.2009, where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid subject to the fulfillment of the following conditions :

- (i) Goods are defective/not as per specifications agreed upon between the importer and the supplier of goods. However, such goods should not have been worked, repaired or used after importation except where such use was indispensable to discover such defects or non-conformity;
- (ii) No drawback is claimed;
- (iii) Goods are identified as imported goods;
- (iv) The importer exports the goods or relinquishes title to the goods and abandons them or destroys or renders them commercially valueless within 30 days of approval by Assistant or Deputy Commissioner.
- (v) Application for refund of duty is made before the expiry of six months from the relevant date in the prescribed form and in the prescribed manner.

No refund is allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

Question 6

- (a) Pawan, a manufacturer, purchased certain inputs from his supplier Binod. The assessable value was Rs. 2,00,000 and the central excise duty was calculated at Rs. 32,960. Thus, the total purchase invoice was for Rs. 2,32,960. However, Pawan settled the total invoice by paying Rs. 2,08,000 only to Binod in full settlement. How much CENVAT credit can be availed by Pawan ? (5 marks)
- (b) Whether confiscation of improperly imported goods by the customs authority under section 111 read with section 112 of the Customs Act, 1962, is justifiable

where respondent imported goods free from customs duty availing benefit of Notification No.48/99-CUS dated 29th April, 1999 providing exemption exclusively to manufacturer- exporter only, even though they had no manufacturing unit at all ? Critically examine the matter and offer your comments.
(5 marks)

(c) *Describe the cases where goods being exported are liable to confiscation under section 113 of the Customs Act, 1962.*
(5 marks)

Answer 6(a)

Pawan can avail CENVAT Credit to the extent of Rs.32960. CENVAT Credit cannot be reversed just because the supplier Binod has given some discount after removal of the goods or Pawan paid a reduced amount than the invoice price in full settlement (*CCE v. Trinetra texturisers 2004*).

Circular No. 877/15/2008-CX dated 17-11-2008 has also clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of goods, the price is reduced by way of discount or otherwise. However, if the duty paid is also reduced, along with reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed in such cases that the supplier who has paid duty has not filed or claimed refund on account of reduction in price.

Answer 6(b)

The Notification No.48/99-CUS dated 29.04.1999 pertains to a exemption in respect of import against Annual Advance License with Actual User Condition i.e., exemption can be availed by a manufacturer-exporter only. The company did not have a manufacturing unit for manufacture of resultant product out of the duty free imported raw material.

The declaration given by the company for availing the Annual Advance License with Actual User that they were manufacturer-exporter was a false declaration. Even assuming that the company had sent the goods to job workers, they would still not be entitled to avail the benefit of exemption notification since they ought to be manufacturer-exporter to be eligible for the exemption.

Clause (O) of Section 111 contemplates confiscation of goods which are exempted from duty subject to a condition, and that condition is not observed by the importer. As the condition of Manufacturer Exporter has not been observed by the respondent, the confiscation under Section 111 read with 112 of the Act is justifiable.

The company is not an actual user and would not be entitled to utilize the license. The licence having been secured by adopting fraudulent method would not confer any right on the importer and as such company cannot be allowed to plead any equity.

Answer 6(c)

Confiscation of goods under Section 113

The following export goods shall be liable to confiscation under Section 113 :

- (i) Any goods attempted to be exported by sea or air from any place other than a custom port or a custom airport;

- (ii) Any goods attempted to be exported by land or inland water through any route other than a specified route;
- (iii) Any goods attempted to be exported or brought within the limit of any custom area for the purpose of being exported contrary to any prohibition imposed under this Act;
- (iv) Any goods found concealed in a package;
- (v) Any goods which are not included or are in excess of those included in the entry made under this Act;
- (vi) Any goods loaded or attempted to be loaded on any conveyance, the eventual destination of which is a place outside India;
- (vii) Any goods on which import duty has not been paid and which are entered for exportation under Section 74;
- (viii) Any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under Section 75.

Question 7

- (a) (i) *Briefly enumerate the persons not eligible for compounding of offences under Section 9A(2) of the Central Excise Act, 1944. (3 marks)*
- (ii) *Explain the amendments made by the Finance (No. 2) Act, 2009 in the provisions relating to valuation audit under section 14A and CENVAT audit under Section 14AA of the Central Excise Act, 1944. (3 marks)*
- (b) *Discuss briefly the salient features of the system of 'advance rulings' under the Customs Act, 1962. (5 marks)*
- (c) *The Central Excise Act, 1944 as well as the Customs Act, 1962 were amended recently to relax the time limits for filing reference application to the High Court and for filing memorandum of cross objections. Indicate briefly the normal time limits for this purpose and the effect of the changes. (4 marks)*

Answer 7(a)(i)

The Finance (No.2) Act, 2009 provides that the following persons are not eligible for compounding under Section 9A(2):

- (a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of Sub-section (1) of Section 9;
- (b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;
- (d) a person who has been convicted by the court under the Central Excise Act on or after the 30th day of December, 2005.

Answer 7(a)(ii)

As a result of the amendments made by the Finance (No.2) Act, 2009, now, the Chartered Accountants may also be nominated for the purposes of carrying out valuation audit under Section 14A or CENVAT Audit under Section 14AA of the Central Excise Act, 1944. Earlier the provision enabled the nomination of only a Cost Accountant for the purpose.

Answer 7(b)**Advance Ruling for Customs Duty**

Chapter VB of Customs Act, 1962 provides for appointment of 'Authority for Advance Ruling' which would pronounce ruling regarding rate and quantum of duty payable in advance for the benefit of Non-resident setting up joint venture in India in collaboration with a Non-Resident or Resident and for the benefit of Resident setting up joint venture in India in collaboration with a Non-Resident. Following are some salient features of the scheme.

- (i) Authority for Advance Ruling is to be constituted under Section 28F of the Customs Act, 1962. As per the new Sub-section (2A) in section 28F, inserted by the Finance (No.2) Act, 2009, the Central Government can authorize the AAR under the Income-tax Act, 1961, to act as an authority under the Customs Act also by issuing a notification in the Official Gazette in this regard.
- (ii) This authority can determine a question of law or fact specified in the application;
- (iii) The Advance Ruling can only relate to the liability to pay custom duty on an activity proposed to be undertaken in future.
- (iv) The Authority may, after examining the application and the records called for, by order, either allow or reject the application. However, the Authority shall not allow the application where the question raised in the application is pending before any officer of Customs, the Appellate Tribunal or any Court or the matter has already been decided by the Appellate Tribunal or any Court
- (v) The Ruling issued under the scheme would be binding on the applicant and the concerned Commissioner of Customs including their sub-ordinates.
- (vi) The application for Advance Ruling can be made by the applicant along with a fee of Rs. 2500.
- (vii) The Authority for Ruling is required to pronounce its decision in writing within 90 days from the date of application.
- (viii) If the Advance Ruling is obtained by fraud or suppression of facts, it should be declared void *ab-initio*.

Answer 7(c)

The normal time limits for filing appeal to the High Court under Section 35H(1) of the Excise Act, 1944/Section 130A(1) of the Customs Act, 1962 is 180 days from the date on which the order appealed against is received by the Commissioner or the other party. The time limit for filing memorandum of cross objections under Central Excise Act and

Customs Act against any part of the order in relation to which an application for reference has been made is 45 days from the date of the receipt of the notice.

The newly inserted Sub-sections (2A) and (3A) of Section 35G and 35H of the Central Excise Act, 1944 and the newly inserted Sub-sections (2A) and (3A) respectively of Sections 130 and 130A of the Customs Act, seek to empower the High Court to condone the delay in appropriate cases and admit the application for reference even after 180 days and memorandum of cross objections after the period of 45 days.

PART C

Question 8

Attempt any five of the following :

- (i) *What are the entry options available to foreign companies ? Describe briefly.*
(4 marks)
- (ii) *Can a resident assessee claim that the advance ruling obtained by his brother in respect of a similar issue faced by him is applicable to him also ? Will such a ruling be binding on him also ?*
(4 marks)
- (iii) *Whether tax is required to be deducted from commission paid to an agent outside India, if no services are performed in India or there is no fixed place of business in India ? Explain and comment in the light of recent judgement of Authority for Advance Rulings (AAR).*
(4 marks)
- (iv) *Explain, with the help of a simple example, the determination of arm's length price where more than one such price is arrived at by the Transfer Pricing Officer by following the most appropriate method.*
(4 marks)
- (v) *Paresh, aged 66 years and ordinarily resident in India, is a professional. He has earned Rs. 1,00,000 from services provided outside India. His foreign income was taxed at 20% in that country where services were rendered. India does not have any tax treaty with that country. Assuming that Indian income of Paresh is Rs. 3,00,000, what relief of tax under section 91 of the Income-tax Act, 1961 will be allowed to him for the assessment year 2010-11 ? Paresh has contributed Rs. 32,000 towards public provident fund during the previous year 2009-10.*
(4 marks)
- (vi) *State, with reasons in brief, whether the following statements' are true or false :*
 - (a) *A foreign company is resident in India if it is operating its activities in India.*
 - (b) *Arm's length price means price which is applied in a transaction between unassociated persons.*
 - (c) *A resident having transactions with another resident can also seek advance ruling under section 245N of the Income-tax Act, 1961.*
 - (d) *A foreign corporation is considered as a passive foreign investment company under the asset test, if 75% or more of the foreign corporation's assets produce or are held to produce passive income.*
(1 mark each)

Answer 8(i)

A foreign company planning to set up business operations in India has the following entry options:

- As an incorporated entity by getting incorporated under the Companies Act, 1956 or through Joint Ventures or as wholly owned subsidiaries;
- As an office of a foreign entity like a Liaison Office/Representative Office/Project Office/Branch Office.

Entry routes can be through technical collaboration or through financial collaboration. Such investments are made either under automatic route or approval route. Investment under automatic route involves post facto approval of RBI for the investments made and the investments under approval route require prior approval of FIPB.

Foreign Direct investment in India is allowed on automatic route in almost all sectors except.

- Proposals that require an industrial license and cases where foreign investment is more than 24% in the equity capital of units manufacturing items reserved for the small scale industries.
- Proposals in which the foreign collaborator has a previous venture/tie-up in India.
- Proposals relating to acquisition of shares in an existing Indian Company in favour of a Foreign/Non-Resident Indian (NRI)/Overseas Corporate Body (OCB) investor; and
- Proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted etc.

Answer 8(ii)

No, a resident assessee can not claim that the advance ruling obtained by his brother in respect of a similar issue faced by him. According to section 245S the advance ruling shall be binding :

- (a) on the applicant who had sought it and
- (b) in respect of the specific transaction in relation to which advance ruling was sought.

Further it shall also be binding on the Commissioner and the Income Tax Authorities subordinate to the Commissioner.

Therefore, the advance ruling obtained by his brother cannot be binding on him.

Answer 8(iii)

No tax is required to be deducted from commission paid to an agent outside India, if no services are performed in India or there is no fixed place of business in India. The facts of the question are similar to the recent judgment of Advance Ruling authority in AAR No.802 of 2009.

Facts of the ruling : The appellant was an Indian Company engaged in the business of manufacture and sale of industrial pesticides. The applicant appointed a South African Company to promote and market its products in South Africa. In consideration of its services, South African Co was to receive commission from the applicant in respect of completed transactions.

Decision

- (i) As no business operations are carried out in India by South African Co. therefore no income can be deemed to accrue or arise in India.
- (ii) South African Co has no fixed place of business in India. Therefore the business profits of South African Co. for services rendered as commission agent in South Africa could not be brought to tax in India.
- (iii) As commission paid by the applicant to SA Co. is not chargeable to tax in India by virtue of Article 7 of DTAA and Section 9(1)(i) read with the Explanation thereto, the applicant is not obliged to deduct tax under section 195 of the Act.

(Note : Due credit may be given to the students if they have broadly and logically argued and arrived at the correct conclusion)

Answer 8(iv)

As per the amendment made by the Finance (No.2) Act, 2009, in Section 92C(2) w.e.f 01/10/2009 where more than one price is determined by the Transfer Pricing Officer by following the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such price. However, if the arithmetical mean so determined is within five percentage of the Transfer Price, then the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made. This provision is effective from 1st October, 2009.

Example:

Transfer Price	ALP determined by applying arithmetical mean	ALP for Transfer Price adjustment
1. 100	105.2	105.2
2. 100	104.9	100

Answer 8(v)

The assessee is a senior citizen in the previous year 2009-10. His tax liability will be calculated as under :

	Rs.
Indian Income	3,00,000
Income from abroad	1,00,000
Gross Total Income	4,00,000
Less : Deduction under section 80-C	
- Public Provident Fund	32,000
Total Taxable Income	<u>3,68,000</u>

Tax on Rs. 3,68,000		
On Rs. 2,40,000	Nil	
2,40,000 to Rs. 3,00,000 @ 10%	Rs. 6000	
3,00,000 to Rs. 3,68,000 @ 20%	Rs 13600	19,600
Add (EC @ 2%+ SHEC @ 1%)		588
		<u>20,188</u>
Less : Relief u/s 91(See W.N 1)		5,500
Total Tax		<u>14,688</u>
Rounded off		<u>14,690</u>

Working Note:*Calculation of Relief u/s 91*

(1) Average Rate tax in India	
$(20,190 \div 3,68,000) \times 100$	5.5%
(2) Average Rate of tax in foreign country	20%
Income subject to double Taxation	1,00,000

Hence, relief available under Section 91 shall be 5.5 % or 20% of foreign income, whichever is less

$$\text{Rs. } 1,00,000 @ 5.5\% = \text{Rs. } 5,500$$

Answer 8(vi)

- (a) **False** : A foreign company will be treated as Resident in India only if during the relevant previous year, the control and management of its affairs is situated wholly in India [Section 6(3)(ii)]
- (b) **True** : Under Section 92F(ii), arm's length price is defined to mean the price which is applied or proposed to be applied in a transaction between persons other than associated enterprises in uncontrolled conditions.
- (c) **False** : As per Section 245N(b) advance ruling can be sought by a resident having transactions with a non-resident.
- (d) **False** : Even if 50% of the foreign corporations assets produce passive income, it could be treated as PFIC.