

ADVANCED TAX LAWS AND PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : All references to sections mentioned in Part-A and Part-C of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2011-12, unless stated otherwise.

Part A

(Answer **ANY TWO** Questions from this part)

Question 1

- (a) Sure Success Ltd. wants to acquire an asset costing ₹1,00,000. It has two options available, the first one is buying the asset by taking a loan repayable in five installments of ₹20,000 each with 14% interest per annum. The second is leasing the asset for which annual lease rental charge is ₹30,000 upto 5 years. The lessor charges 1% as processing fee in the first year. Assume the internal rate of return to be 10%. The present value factors are —

Year	1	2	3	4	5
P/V factor	.909	.826	.751	.683	.621

Assuming that the payments are made at the end of the year, suggest which alternative is better for the company. The rate of depreciation is 15% while tax rate is 33.22%. (10 marks)

- (b) What is the difference between 'demerger' and 'slump sale' ? (5 marks)

Answer 1(a)

I - If asset is taken on lease

Particulars	Years				
	1	2	3	4	5
	₹	₹	₹	₹	₹
Lease Rent	31,000	30,000	30,000	30,000	30,000
Tax Saving @ 33.22%	10,298	9,966	9,966	9,966	9,966
Net Cash outflow	20,702	20,034	20,034	20,034	20,034
PV factor	0.909	0.826	0.751	0.683	0.621
PV of net cash outflow	18,818	16,548	15,046	13,683	12,441
Total					76,536

II - If asset is bought

Particulars	Years				
	1	2	3	4	5
	₹	₹	₹	₹	₹
Payment of Loan	20,000	20,000	20,000	20,000	20,000
Interest	14,000	11,200	8,400	5,600	2,800
Gross outflow	34,000	31,200	28,400	25,600	22,800

	1 ₹	2 ₹	3 ₹	4 ₹	5 ₹
Depreciation @ 15%	15,000	12,750	10,838	9,212	7,830
Total of Interest & Depreciation	29,000	23,950	19,238	14,812	10,630
Tax saving @ 33.22%	9633.8	7956	6391	4921	3531
Net cash outflow	24,366	23,244	22,009	20,679	19,269
PV factor	0.909	0.826	0.751	0.683	0.621
PV of outflow	22,149	19,199	16,529	14,124	11,966
Total					83,967

Lease option is better, as the cash outflow is less.

Answer 1(b)

The Difference between slump sale and demerger is as follows:

1. Section 2(19AA) says that a 'demerger' means a transfer pursuant to a scheme under Sections 391-394 of the Companies Act, 1956. The resulting company must issue, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis and a slump sale is defined in section 2(42C) to mean the transfer of one or more undertakings as a result of the sale for a lump-sum consideration without values being assigned to individual assets and liabilities.
2. According to section 45, any profits or gains arising from the transfer of a capital asset are chargeable to capital gains tax and under Section 47(vii), the provisions of Section 45 do not apply to a transfer in a demerger of a capital asset by the demerged company to a resulting company if the resulting company is an Indian company.
3. Under section 50B, capital gains arising from slump sales are chargeable to tax. The capital gains from such slump sales are to be calculated by subtracting the net worth of the undertaking that is transferred from the lump-sum consideration.
4. If a transfer is a demerger under the Income tax Act, capital gains liability would not arise. If it is a slump sale, such liability would arise. For the transfer to be a 'demerger', the conditions mentioned in Section 2(19AA) must be complied with.

Question 2

- (a) *Royal Ltd. commenced operations of the business of a new five star hotel in Mumbai on 1st April, 2010. The company incurred capital expenditure of ₹600 lakh on purchase of land and ₹95 lakh on construction of building during the period from January, 2010 to March, 2010 exclusively for the above business, and capitalised the same in its books of account as on 1st April, 2010. Further, during the previous year 2010-11, it incurred capital expenditure of ₹10 crore (out of which ₹60 lakh was for acquisition of land) exclusively for the above business.*

Compute the deduction under section 35AD for the assessment year 2011-12, assuming that Royal Ltd. has fulfilled all the conditions specified in section 35AD and has not claimed any deduction under chapter VI-A under the heading 'C-Deductions in respect of certain incomes'. (6 marks)

- (b) *Conversion of small private companies and unlisted public companies into limited liability partnership is exempt from capital gains tax subject to fulfillment of certain conditions. State these conditions as specified in section 47(xiiib). (6 marks)*
- (c) *Discuss tax implications of dividend declaration and issue of bonus shares. (3 marks)*

Answer 2(a)

Computation of deduction allowable under section 35AD for the Assessment Year 2011-12

Particulars	₹
Capital expenditure incurred during Previous Year 2010-11 (excluding expenditure on acquisition of land) i.e. ₹1,000 lakhs – ₹.60 lakh	940 lakh
Capital expenditure incurred prior to 1.4.2010 and capitalized in the books of account as on 1.4.2010	95 lakh
Total Deduction available under Section 35AD	1035 lakh

Note : Expenditure for acquisition of land shall not be allowed as deduction.

Answer 2(b)

Section 47(xiiib) has been introduced to facilitate conversion of small private and unlisted public companies into LLPs. On conversion, it shall not be regarded as a transfer for the purpose of levy of capital gains tax under section 45, subject to fulfillment of following conditions:

- All assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP.
- The shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company.
- No consideration other than share in profit and capital contribution in the LLP arises to the shareholders;
- The aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than 50% at any time during the period of 5 years from the date of conversion;
- The total sales, turnover or gross receipts in business of the company should not exceed ₹60 lakh in any of the three previous years preceding the previous year in which conversion takes place; and
- No amount is paid, either directly or indirectly, to any partner out of the accumulated profit standing in the accounts of the firm on the date conversion for a period of three years from the date of conversion.

Answer 2(c)**Tax Implications of Dividend Declaration and issue of Bonus shares:**

The Domestic Company shall be liable to pay additional income tax on any amount declared, distributed or paid by such company by way of dividend (whether interim or otherwise), whether out of current or accumulated profits. Such additional income tax shall be payable @ 15% plus surcharge @ 7.5% plus education cess @ 2% and SHEC @ 1%. Therefore, the dividend received in the hands of shareholders shall be exempt.

No tax liability arises on issue of Bonus shares either in the hands of company or in the hands of shareholders.

Question 3

An employee is going to join your company on annual CTC of ₹18,00,000. Prepare a remuneration plan for him keeping in view the following :

- (i) *He wants to minimise his tax liability within the legal framework but take home salary should not be less than ₹9 lakh.*
- (ii) *He does not own a house.*
- (iii) *He owns a car. But he can take another car from the company.*
- (iv) *He has two children and one of them is in a boarding school.*
- (v) *His wife is employed and she gets children education allowance.*
- (vi) *There is no uniform code in your company.* (15 marks)

Answer 3

- (1) **Tax Liability where whole salary is accepted in cash :** First, let's assume that the employee gets ₹18,00,000 as cash and no exempted allowance and deduction under section 80C to 80U is available to him. Then his Tax Liability shall be ₹4,05,820. This is the maximum liability on the employee.

- (2) **Tax liability where salary is divided into perquisites/allowance which are fully exempt :** To minimise the tax liability salary shall be divided into allowances/perquisites which are exempt. On the basis of the given facts, the pay package shall be divided as follows:

- (i) *Employee does not own a house :* In this case, there are two options. First is to give a Rent free furnished house and second is to give House Rent Allowance. In the first option, the value of rent free furnished house shall be taxable. And it will not help him in minimising the tax. In the second option, he can get exemption of HRA as per section 10(13A) to the minimum of actual HRA received or actual rent minus 10% of salary or 40% (in case of Non-metro cities)/50% (in case of metro cities) of salary.

In such a situation, it's better to pay at least 50% of salary as HRA assuming that he resides in Delhi and that the amount of actual rent less 10% of salary is higher than HRA received.

- (ii) *Owns a Car :* As the employee already owns a car so therefore it has no use to give him another car as the valuation of car is fully taxable. In that case he can be given conveyance allowance as ₹800 p.m which is exempt in his hands.

- (iii) *Children Education Allowance* : The employee has two children and 1 of whom is in boarding school. Children education allowance is exempt up to Rs. 100 pm for two children. ₹ 300 pm for hostel expenditure maximum of two children. Assuming that his wife does not claim tax exemption for Children Education allowance. Hence, ₹ 2400 as Children education allowance and ₹3600 as Hostel facility allowance can be given and which shall be exempt in his hands.
- (iv) *Uniform Allowance* : As there is no uniform code in the company therefore no allowance for it can be given to him.
- (v) *Medical Reimbursement* : An exemption of ₹ 15,000 is provided in the Act. Hence ₹ 15,000 can be given him towards medical reimbursement.
- (vi) *Gift* : The Company can give him gifts in kind upto ₹ 5000, as it is exempt in the Act.
- (vii) *Leave Travel Concession* : Assume that he spends around ₹ 70,000 on travel. Therefore he may be allowed ₹ 1,40,000 in alternate year as Leave travel concession.
- (viii) *Telephone reimbursement* : It is exempted to the extent the amount incurred on it. Assuming that ₹ 1,200 pm is spent by him on telephone expenditure therefore ₹ 14,400 can be given to him toward this expenditure.
- (ix) *Contribution of Employee & Employers towards provident fund* : 12% of the employee's contribution is allowed as deduction under the chapter VI of the Act and 12% of the employer's contribution is exempt under the head salary. Hence, he may be given 24% of basic pay and dearness allowance towards the PF contribution.
- (x) *Leave Encashment* : Leave encashed during the service is fully taxable however leave encashed at the time of retirement is exempt upto minimum of the following:
- Leave encashment actually received
 - 10 month average salary
 - Cash equivalent of unavailed leave calculated on the basis of maximum 30 leave of every year.
 - ₹ 3,00,000

Therefore, he may be given 30 days leave salary which may opt at the time of retirement for getting the exemption.

On the basis of above, his salary structure is prepared as follows:

<i>Particulars</i>	<i>Salary Structure</i>	<i>Taxable income as per Income Tax Act</i>
Basic Pay	6,14,260	6,14,260
Dearness Allowance (50 % of Basic Pay)	3,07,129	3,07,129
HRA	4,60,695	Exempt
Children Education Allowance	2,400	Exempt
Conveyance Allowance	9,600	Exempt

Hostel facility Allowance	3,600	Exempt
Medical Reimbursement	15,000	Exempt
Gift in Kind	5,000	Exempt
Leave Travel Concession	70,000	Exempt
Telephone reimbursement	14,400	Exempt
12% Contribution of employee towards PF	1,10,567	1,10,567
12% Contribution of employer towards PF	1,10,567	Exempt
Leave Encashment	76,782	Taxable at the time of encashment
Total	18,00,000	10,31,956
Gross Total Income		10,31,956
Less : Deduction under section 80C		1,00,000
Total Income		9,31,956
(Rounding off)		9,31,960
Income tax		1,33,588
Education Cess @2% & SHEC @1%		4,008
Total tax liability		1,37,596
(Rounding off)		1,37,600

He will get ₹13,59,484 (614260 + 307129 + 460695 + 2400 + 9600 + 3600 + 15000 + 50000 + 14400 + 20000 - 137600) as take home salary. His tax liability will get reduced to ₹ 1,37,600 from ₹ 4,05,820.

*(Note : Alternate answer may be possible.)

PART B

(Answer Question No. 4 which is compulsory
and **ANY TWO** of the rest from this part.)

Question 4

- (a) Write the most appropriate answer from the given options in respect of the following :
- (i) Which of the following has not been expressly defined under the Central Excise Act, 1944 —
- Broker
 - Goods
 - Curing
 - Factory.
- (ii) Which of the following scheme is optional under central excise —
- Duty based on tariff value
 - Duty based on MRP

- (c) Duty based on transaction value
- (d) Duty based on compounded levy.
- (iii) Under section 23 of the Customs Act, 1962, duty payable is remitted if imported goods are lost, destroyed or abandoned before —
 - (a) Goods are examined
 - (b) Duty has been paid
 - (c) The proper officer has made an order for clearance
 - (d) Goods are cleared for home consumption.
- (iv) A proper tax planning exercise would have to take into consideration the following aspect(s) under the Customs Act, 1962 —
 - (a) Classification of goods
 - (b) Valuation of goods
 - (c) Exemption notifications
 - (d) All of the above.
- (v) Effective rate of customs duty on baggage is —
 - (a) 36.05%
 - (b) 41.2%
 - (c) 30.9%
 - (d) 51.5%. (1 mark each)
- (b) Rewrite the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
 - (i) The _____ is not eligible to take credit of special CVD paid on imported goods under section 3(5) of the Customs Tariff Act, 1975.
 - (ii) Order of CESTAT relating to _____ can be appealed directly to the Supreme Court of India under section 35L of the Central Excise Act, 1944.
 - (iii) If fuel or lubricating oil is supplied as stores to foreign going vessel, _____ customs duty paid on the fuel or lubricating oil is refunded as duty drawback.
 - (iv) Assessee can apply for settlement _____ in lifetime of applicant except in respect of some specified cases.
 - (v) The doctrine of promissory estoppel has its origin in principles of _____. (1 mark each)
- (c) Test the veracity or otherwise of the following assertions :
 - (i) There can be 'manufacture' even if both inputs and final product fall under same tariff heading.
 - (ii) Mere change in tariff does not mean there is 'manufacture'. (3 marks each)

- (d) *Can a show-cause notice be issued within a period of five years from the relevant date if the internal audit party finds during the audit of central excise records of a manufacturer that central excise duty has been short paid ? Explain.* (4 marks)

Answer 4(a)(i)

- (b) Goods

Answer 4(a)(ii)

- (d) Duty based on compounded levy

Answer 4(a)(iii)

- (d) Goods are cleared for home consumption

Answer 4(a)(iv)

- (d) All of the above

Answer 4(a)(v)

- (a) 36.05%.

Answer 4(b)

- (i) The **Service Provider** is not eligible to take credit of special CVD paid on imported goods under section 3(5) of the Customs Tariff Act, 1975.
- (ii) Order of CESTAT relating to **Rate of duty & valuation** can be appealed directly to the Supreme Court of India under section 35L of the Central Excise Act, 1944.
- (iii) If fuel or lubricating oil is supplied as stores to foreign going vessel, **100%** customs duty paid on the fuel or lubricating oil is refunded as duty drawback.
- (iv) Assessee can apply for settlement **more than once** in lifetime of applicant except in respect of some specified cases.
- (v) The doctrine of promissory estoppel has its origin in principles of **Equity**.

Answer 4(c)(i)

Manufacture implies a change, but every change is not manufacture. There must be a transformation; a new and different article must emerge having a distinctive name, character or use. Once a new commodity having a definite and distinct commercial identity in the market is produced and the same has been specified in the Tariff, it is exigible to duty.

There can be manufacture even if both inputs and final product fall under same tariff, if a different identifiable commercially known product comes into existence - *Prachi Industries v. CCE* (2008) 14 STT 161(SC), *Laminated Packing's (P) Ltd., v. CCE* (1990) 49 ELT 326 (SC).

Answer 4(c)(ii)

It is irrelevant whether the new article falls into the same tariff heading as the duty paid inputs from which it is manufactured or belongs to a separate tariff heading. Just because raw material and finished product fall in different tariff headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture - *CCE v. SR Tissues* (2005) 186 ELT 385 (SC).

Making tarpaulin made up from tarpaulin sheet by stitching and putting eyelets is not manufacture even if tariff heading is different - *CCE v. Tarpaulin International* (2010) 296 ELT 481(SC).

Answer 4(d)

Yes, a show cause notice can be issued within a period of 5 years from the relevant date if the internal audit party finds during the audit that excise duty has been shortly paid.

Under section 11A(5), where during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or short-levied or short-paid or erroneously refunded due to fraud, collusion, any willful mis-statement, suppression of facts, contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty, but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.

Question 5

- (a) *Solid Shoes Co., a manufacturer of footwear, used to purchase various raw materials like fabrics, rubber, chemicals, solvent, etc., which were mixed together. The thin layer of such mixture was sandwiched between two sheets of textile fabric through a calendaring machine. The resultant product 'Double Textured Rubberized Fabric' (DTRF) was cut and stitched as per requirement and was used as shoe-uppers. At times, DTRF was sent to job-workers for stitching purposes. After completing the entire process, the vulcanisation of footwear was done and then, it would be available for sale as footwear.*

Some of the DTRF was used in the manufacture of canvas shoes, which were exempt from duty. The department contended that the intermediate product DTRF was a distinct product with specific properties and was used in considerable quantities for making rain-coats, holdalls, hand-bags, etc., in the outside market. Since the DTRF was excisable good and it was used in the manufacture of exempted final product being canvas shoes, therefore DTRF was liable to excise duty. However, the department didn't have sufficient evidence to prove its marketability.

Examine whether contention of the department is correct by referring to case law, if any, in the light of explanation added to section 2(d) of the Central Excise Act, 1944 w.e.f. 10th May, 2008. (5 marks)

- (b) *Improper Ltd. made an unauthorised import of goods, which were later on confiscated. Goods were not redeemed by paying fine under section 125 of the Customs Act, 1962. The assessee contended that once the imported goods were confiscated and the option to release them was not exercised, no duty was payable. It placed reliance on section 23 of the said Act which provides that if the owner of imported goods relinquishes his title to the goods, he shall not be liable to pay the duty thereon.*

Discuss briefly whether the assessee is bound to pay customs duty with reference to decided case law, if any. (5 marks)

- (c) *Explain the interpretation of phrase 'a mistake apparent from record' as mentioned in section 35C(2) of the Central Excise Act, 1944.* (5 marks)

Answer 5(a)

The facts of the given case are similar to *Bata India Ltd. v. CCE* (2010) 252 ELT 492(SC). The Apex Court observed that mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold.

The Supreme Court further ruled that the burden to show that the product is capable of being bought or sold is entirely on the revenue, which has failed to prove marketability. Therefore, 'Double Textured Rubberized Fabric (DTRF)' was not liable to excise duty.

The above judgement is in conformity with the explanation to Section 2(d) of Central Excise Act, 1944 inserted by the Finance Act, 2008 according to which capability of being bought and sold for a consideration constitutes deemed marketability.

Hence, the contention of the department is not correct and Solid Shoes Co. is not required to pay duty on DTRF.

Answer 5(b)

Yes, the assessee is bound to pay customs duty, even if the goods are confiscated and not redeemed by paying fine.

The facts of the case are similar to *Poona Health Services v. CCus.* 2009 (242) E.L.T. 335 (Bom.) The High Court elucidated the distinction between section 23 and section 125. Under section 23, the person who imports the goods, surrenders his title in the goods. By surrendering title in the goods, the person importing the goods or the owner of the goods ceases to have a right to claim the goods. On the other hand, the order of confiscation is passed in respect of the person who has claimed to import or export the goods. It implies that he claims title or right in the property. The fine under section 125 is payable by the person who seeks redemption of the goods. If the goods are not redeemed, then they vest in the State. The person however, who had imported the goods, does not cease to have liability for payment of duty because he continues to be the person who had imported the goods and claims title of the goods. The two sections therefore, operate in two different situations and are mutually exclusive. Therefore, section 23 cannot be considered for the purpose of interpreting section 111.

Section 111 confers the power to confiscate and applies only when the goods are improperly imported and or the other provisions are satisfied. The fine payable to get possession of the goods under section 125 is distinct and different from the duty of goods which are to be imported or exported.

Hence, in case the imported goods are confiscated, and goods are not redeemed by paying fine, the importer is bound to pay the customs duty.

Answer 5(c)

Tribunal has no powers to review its orders. However, it may pass order for rectifying "a mistake apparent from the records", within six months of passing an order under section 35C(2) of Central Excise Act, 1944.

In Asst Commr, IT, *Rajkot v. Saurashtra Kutch Stock Exchange Ltd.* 2008 (230) ELT 385 (SC) Supreme Court, while interpreting the phrase "any mistake apparent from record" stated that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error apparent on the face of the record means an error which strikes on mere looking and does not need long drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness.

The Apex Court further clarified that an error cannot be said to be apparent on the face of the record if one has to travel beyond the records to see whether the judgment is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

Question 6

- (a) *Unfair Ltd.* sold 100 units manufactured by it for ₹12,000 per unit. It had received interest-free advance of ₹6,00,000 from the buyer for the whole of the year. Compute the assessable value of 100 units sold in following independent cases:
- The price charged from other buyers is ₹11,600 per unit.
 - The price charged from other buyers is ₹12,800 per unit.
 - The normal rate of interest is 12% per annum and the price charged from other buyers is ₹12,800 per unit. (6 marks)
- (b) From the following information, compute the total amount of customs duty payable by the importer :
- Assessable value under customs : ₹6,00,000.
 - Tariff value notified under section 3(2) of the Central Excise Act, 1944 for payment of excise duty on like article manufactured in India : ₹5,00,000.
 - | | | |
|---------------------|---|----------------|
| Basic customs duty | = | 10% |
| Central excise duty | = | 10% |
| Special CVD | = | Nil |
| Education cess | = | as applicable. |

(6 marks)
- (c) *Mayank* manufactured and exported goods worth ₹10,00,000 to *Uday* of UK on 1st January, 2011 and availed duty drawback of ₹15,000. *Mayank* imported the same goods on 8th February, 2011. What will be the customs duty payable

by Mayank, if rate of basic customs duty is 10% and goods are exempt from CVD and special CVD ?
(3 marks)

Answer 6(a)

Computation of Assessable Value of Unfair Ltd.

As per the explanation 2 to Rule 6 of the Central Excise Valuation Rules, 2000, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods. Hence, the assessable value shall be determined as under:

(i) Assessable value = ₹12,000 × 100 = ₹12,00,000

No. notional interest shall be added as advance received has not influenced the price.

(ii) Assessable value = ₹(12,000 + 800) × 100 = ₹12,80,000

₹800 shall be added as notional interest (₹12,800 – ₹12,000) as the price charged is influenced due to the receipt of advance.

(iii) Assessable Value = ₹(12,000 + 800) × 100 = ₹12,80,000

Rate of interest is irrelevant, however, Rs. 800 shall be added as notional interest (₹12,800 – ₹12,000) as the price charged is influenced due to the receipt of advance.

Answer 6(b)

Computation of Total Customs Duty payable

	₹
Assessable Value (AV)	6,00,000
Basic Customs Duty (BCD) @ 10%	60,000
Additional Customs Duty under section 3(1), i.e., CVD @ 10.3% on AV+ BCD i.e. ₹6,60,000	67,980
EC & SHEC @ 3% on BCD + CVD (₹1,27,980)	3,839
Total customs duty payable	<u>1,31,819</u>

Answer 6(c)

As per Notification No.94/1996 – Cus dated 16.12.1996 If the same goods which were exported are re-imported within 3 years and there is no change in the identity of the goods between the time of their export and re-import then customs duty shall be payable equals to duty drawback availed.

Thus the customs duty payable by Mr. Mayank on re-import of goods shall be ₹15,000.

Question 7

- (a) *Besides excise duty concessions, what are the other procedural concessions enjoyed by small scale industries ? Explain briefly. (7 marks)*
- (b) *Discuss briefly the provisions of section 28(5) of the Customs Act, 1962 regarding conclusion of proceedings at show-cause notice stage itself, when extended period of limitation has been invoked. (5 marks)*
- (c) *Write a note on 'refund of export duty'. Is doctrine of unjust enrichment applicable to it ? (3 marks)*

Answer 7(a)

Besides excise duty exemptions, the SSI units enjoy many more concessions in terms of procedures as under:

- (i) *Payment of Duty* : SSI units have to pay excise duty on quarterly basis by 5th of the following quarter (by 6th in case of e-payment). In month of March, duty is payable by 31st March;
- (ii) *Filing of return* : SSI unit has to submit excise duty return on quarterly basis by 10th of the following quarter.
- (iii) *Registration* : No registration up to the turnover of ₹150 lakh. Only a declaration once in lifetime on reaching the turnover of ₹90 lakh (specified limit).
- (iv) *Export procedure* : ARE-1 form need not be prepared for SSI units with turnover below ₹150 lakh.
- (v) *CENVAT Credit* : SSI units can avail entire CENVAT Credit on capital goods in the First year itself.
- (vi) *Official Visits* : SSI units can be visited by Departmental Officers only with specific permission of Assistant Commissioner and for specific purpose. They have to enter relevant particulars in visitors' book maintained by the assessee
- (vii) *Audit* : Small units may be audited once in five years, while medium SSI units may be audited once in two years.

Answer 7(b)

As per section 28(4) of Customs Act, 1962, where any duty has not been levied or has been short-levied or erroneously refunded or interest payable has not been paid, partly paid or erroneously refunded by reason of collusion, wilful mis-statement and suppression of facts then the proper officer shall serve show-cause notice within five years from the relevant date.

Section 28(5) provides that the person on whom notice is served may pay the duty (in full or in part) as may be accepted by him along with interest payable thereon under section 28AA and penalty equal to 25% of such duty liability, within 30 days of the receipt of the notice and inform the proper officer of such payment in writing.

If the person has paid full amount of duty along with interest and penalty @ 25% of duty liability, then:

- (i) The proceedings in respect of such person and other persons to whom notices were served shall be deemed to be concluded but,

- (ii) The prosecution proceedings in relation to offences falling under section 135, 135A and 140 will not be deemed to be concluded and such proceeding may be initiated/continued against him.

However, if the proper officer is of the opinion that the duty with interest and penalty paid falls short of the amount actually payable then he shall continue the proceeding by issue of show cause notice in the manner as provided in section 28(1)(a) for the amount which falls short.

Answer 7(c)

Export duty is charged on very few items, but section 26 of Customs Act makes provisions for refund of export duty. Export duty is refundable if:

- (i) The goods are returned otherwise than by way of resale;
- (ii) Goods are re-imported within one year from the date of re-exportation;
- (iii) An application for refund is made before the expiry of six months from the date on which the proper officer makes an order for clearance of goods.

Doctrine of unjust enrichment does not apply to refund of export duty as this refund is under section 26 of Customs Act, which has not been amended - Section 27(2)(d).

PART C

Question 8

Attempt any five of the following :

- (i) *What are the factors to be considered in taking decision whether a country is tax haven or not ?*

(4 marks)

- (ii) *Ajit has an undertaking (Unit-A) in free trade zone (FTZ) and another undertaking (Unit-B) in domestic tariff area (DTA). From the following particulars, compute the deduction under section 10A for the assessment year 2011-12 :*

	Unit-A (₹)	Unit-B (₹)
Total turnover	60 lakh	40 lakh
Export turnover (included in above)	40 lakh	—
Profit earned	21 lakh	12 lakh

(4 marks)

- (iii) *Explain in brief the circumstances under section 9(1)(v), (vi) and (vii) when interest, royalty and fees for technical services (FTS) shall be deemed to accrue or arise in India.*

(4 marks)

- (iv) *Who can seek 'advance rulings' ?*

(4 marks)

- (v) *Discuss when an enterprise is taken as 'associated enterprise' under section 92A.*

(4 marks)

(vi) *Discuss the salient aspects concerning permanent establishment.*

(4 marks)

Answer 8(i)

A tax haven is a place where there is no tax on income or it is taxed at low rate of tax structure. The factors to be considered in taking decision whether a country is tax haven or not are as under:

- (i) There is nil or nominal normal tax on income;
- (ii) There is no system of exchange of information with respect to the tax regime in the tax haven country;
- (iii) The regime lacks transparency;
- (iv) Limited Regulatory supervision or lack of financial disclosure to the government.
- (v) The Government of the country facilitates the establishment of the foreign owned enterprises without the need for strict compliance of local laws or prohibits such entities from having any co-mechanical impact on the local economy.

Answer 8(ii)

Deduction under section 10A shall be available on the profits attributable to exports. The Unit B has not exported during the previous year hence no deduction is allowable. The deduction available to Unit A shall be computed on the following basis:

$$\begin{aligned}
 &= \frac{\text{Export turnover of undertaking} \times \text{Profit of the undertaking}}{\text{Total turnover of undertaking}} \\
 &= ₹ \frac{40 \text{ lakh}}{60 \text{ lakh}} \times ₹21 \text{ lakh} \\
 &= ₹14 \text{ lakh}
 \end{aligned}$$

₹14 lakh shall be allowed as deduction to Unit A subject to fulfillment certain conditions specified in section 10A.

Answer 8(iii)

Under section 9(1)(v), (vi), (vii) in the following circumstances the Interest, royalty and fees for technical services (FTS) shall be deemed to accrue or arise in India where such income is:

- (a) payable by state or central government;
- (b) payable by a resident except where the payment relatable to a business or profession carried on by him outside India or to any other source of his income outside India;
- (c) payable by a non-resident, if payment is relatable to a business or profession carried on by him in India or to any other source of his income in India;

As per the explanation to section 9, the interest, royalty and FTS is deemed to accrue or arise in India, and shall be included in the total income of the Non-resident regardless of whether he has a residence or place of business or business connection in India.

Answer 8(iv)

As per Section 245N(b) of the Income Tax Act, the advance ruling under the income-tax act could be sought by :

- (a) A non-resident for a transaction which has been undertaken or is proposed to be undertaken by him; or
- (b) A resident for a transaction which has been undertaken or is proposed to be undertaken by him with a non-resident or
- (c) A resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette specify in this behalf.

These applicants may make an application under sub-section (1) of section 245Q.

Answer 8(v)**Associated enterprise [Section 92A(1)]**

“Associated enterprise”, in relation to another enterprise, means an enterprise—

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the : (i) management, or (ii) control, or (iii) capital of the other enterprise; or
- (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Thus, section 92A(1)(a) provides that if an enterprise participates in the management, capital or control of another enterprise, then, the other enterprise is to be regarded as associated enterprise of the participating enterprise. Such participation may, however, be direct, indirect or through one or more intermediaries.

Section 92A(1)(b) provides that if one or more persons participates in the management, capital or control of one enterprise and the same persons also participates in the management, capital or control of another enterprises, then, both these enterprises are associated enterprises. In this case also participation may be direct, indirect or though one or more intermediaries.

Answer 8(vi)

One of the important terms that occur in all the Double Taxation Avoidance Agreements is the term ‘Permanent Establishment’ (PE) which has not been defined in the Income Tax Act. However as per the Double Taxation Avoidance Agreements, PE includes, a wide variety of arrangements i.e. a place of management, a branch, an office, a factory, a workshop or a warehouse, a mine, a quarry, an oilfield etc. Imposition of tax on a foreign enterprise is done only if it has a PE in the contracting state. Tax is computed by treating the PE as a distinct and independent enterprise. Normally, all the tax treaties contain a definition of PE. PE generally means a fixed place of business. It includes a construction site and installation project provided such activities last more than the specified time.
