

ADVANCED TAX LAWS AND PRACTICE

Time allowed : 3 hours

Maximum marks : 100

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

PART A

(Answer ANY TWO questions from this part.)

Question 1

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

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

Answer 1(a)

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

Answer 1(b)

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

Answer 1(c)

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

Companies can minimize their Wealth-tax liability:

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

Question 2

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

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

Answer 2(a)

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

Answer 2(b)

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

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

Answer 2(c)

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

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

Question 3

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

Answer 3(a)

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

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

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

Answer 3(b)

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

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

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

Answer 3(c)

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

Answer 3(d)

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

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

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

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

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

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

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

PART B

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

Question 4

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

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

OR

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

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

(5 marks)

Answer 4(a)

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

Answer 4(b)

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

Answer 4(c)

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

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

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

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

Alternate Answer 4(c)

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

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

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

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

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

Question 5

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

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

(5 marks)

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

Answer 5(a)

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

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

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

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

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

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

Answer 5(b)

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

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

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

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

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

Answer 5(c)

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

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

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

Question 6

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

Answer 6(a)

Such manufacturer/service provider has the following options:

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

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

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

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

Answer 6(b)

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

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

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

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

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

Answer 6(c)

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

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

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

Question 7

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

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

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

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

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

Answer 7(a)

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

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

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

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

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

Answer 7(b)

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

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

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

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

Answer 7(c)

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

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

PART C

Question 8

Attempt **any four** of the following :

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

Answer 8(i)

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

Answer 8(ii)

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

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

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

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

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

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

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

Answer 8(iii)

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

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

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

Answer 8(iv)

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

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

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

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

Answer 8(v)

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

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

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

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

Answer 8(vi)

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

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

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

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

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.

- (iii) (a) Central Excise duty = $.14 = .14 \times .62 = 0.0868$
 (b) Education Cess = $.14 \times .02 = .0028 \times .62 = 0.001736$
 (c) SAH $14 = .14 \times .01 = .0014 \times .62 = 0.000868$
0.089404
 Total = $.1442 \times .62 = 0.089404$

- (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 (I) 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.
-

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) Prior recommendation of the President of India is required to Bills affecting taxation in which States are interested under Article —

- (a) 271 of the Constitution of India
- (b) 281 of the Constitution of India
- (c) 274 of the Constitution of India
- (d) 273 of the Constitution of India.

(ii) All income arising to any person by virtue of a revocable transfer of assets is chargeable as the income of the transferor and shall be included in his total income under the Income-tax Act, 1961 —

- (a) As per section 60
- (b) As per section 61
- (c) As per section 62
- (d) As per sections 60 and 62.

(iii) As per section 5, the following is not included in the total income of a non-resident company —

- (a) Income which accrues or arises in India during the previous year
- (b) Income which is deemed to accrue or arise in India
- (c) Income which arises or accrues outside India
- (d) Income which is received or deemed to be received in India.

(iv) As per Article 270(1) read with Article 4(a) of the constitution of India, the proceeds of corporation tax are —

- (a) Not divisible among the States
- (b) Divisible among the States
- (c) Divisible between the Centre and States
- (d) None of the above.

(v) Part II of the First Schedule of Finance Bill gives —

- (a) Rates of income-tax
- (b) Rates of TDS
- (c) Tax on agricultural income
- (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) Any person discontinuing any business or profession shall give notice to the Assessing Officer under section 176(3) within _____ days thereof.
 - (ii) As per Explanation 4 to the section 115JB, every company to which the section applies shall furnish a report in the prescribed form from _____.
 - (iii) The Commissioner (Appeals) may admit an appeal under Chapter XX of the Income-tax Act, 1961 after the expiration of _____ of the receipt of order appealed against if he is satisfied that the appellant had sufficient cause for not presenting it within that period.
 - (iv) A domestic company is liable to pay dividend tax at the rate of _____ of dividend declared.
 - (v) As per section 263(2), the revision order shall be passed within _____ from the end of the financial year in which the order was passed by the assessing officer.
(1 mark each)
- (c) Distinguish between 'tax evasion' and 'tax avoidance'. Indicate whether the following acts can be considered as tax evasion/tax avoidance :
- (i) Rajat deposits Rs.70,000 in PPF account to avail tax deduction under section 80C.
 - (ii) Raman is using a motor car for his personal purposes, but charges as business expenditure. (5 marks)

Answer 1(a)

- (i)(c) 274 of the Constitution of India
- (ii)(b) As per Section 61
- (iii)(c) Income which arises or accrues outside India.
- (iv)(c) Divisible between the Centre and States
- (v)(b) Rates of TDS

Answer 1(b)

- (i) Fifteen days
- (ii) From an Accountant as defined in the explanation below sub section 2 of section 288.
- (iii) 30 days
- (iv) 16.995%
- (v) Two years

Answer 1(c)

Tax evasion means a method of evading tax liability by dishonest means like suppression, conscious violation of rules, inflation of expenses etc. while tax avoidance means planning for minimisation of tax burden according to the provisions of the tax laws and within legal framework, though it defeats the basic intention of legislature.

Tax evasion involves no payment of tax after the liability of tax has arisen while tax avoidance is planning before hand to avoid tax legally.

Tax evasion involves use of unfair means while tax avoidance takes into account various lacunas of law.

(i) It is neither a tax avoidance nor tax evasion. The claiming of deduction from gross total income under Section 80C by depositing Rs. 70,000 in PPF account comes under tax planning.

(ii) It is an unlawful act to treat a personal expenditure as business expenditure, which is disallowed under the law. Raman is resorting to unfair means to claim deduction by falsification of records. Therefore it is tax evasion and illegal.

Question 2

(a) Answer **any two** of the following :

(i) What is the quantum of Minimum Alternate Tax (MAT) for a 'domestic company' and 'foreign company' for the assessment year 2010-11 ?

(ii) An enterprise seeks your advice regarding the applicability of the provisions of section 80-IC and the conditions, if any, to be fulfilled. Elucidate.

(iii) Explain the meaning of 'jewellery' and 'urban land' under the Wealth-tax Act, 1957. (3 marks each)

(b) Distinguish between the following :

(i) 'Section 271AA' and 'section 271B'.

(ii) 'Section 80-IE' and 'section 80-IC' in regard to substantial expansion. (3 marks each)

(c) Discuss the concept of 'deemed dividend' under section 2(22). (3 marks)

Answer 2(a)(i)

(i) The rates of Minimum Alternate Tax (MAT) for the Assessment Year 2010-11 are as follows:

Domestic Company

(i) If book Profit does not exceed Rs.1 crore

IT	15%
SC	Nil
EC (@ 2%)	0.3
SHEC (@ 1%)	<u>0.15</u>
Total	<u>15.45%</u>

(ii) If book Profit exceeds Rs.1 crore

IT	15.00
SC (10%)	1.50
EC (2%)	0.33
SHEC (1%)	<u>0.165</u>
Total	<u>16.995%</u>

Foreign company

(i) If book Profit does not exceed Rs.1 crore

IT	15
SC	Nil
EC (2%)	0.3
SHEC (1%)	<u>0.15</u>

Total	<u>15.45</u> %
(ii) If book Profit exceeds Rs.1 crore	
IT	15.00
SC (2.5%)	0.375
EC (2%)	0.3075
SHEC (1%)	<u>0.15375</u>
Total	<u>15.83625</u> %

Answer 2(a)(ii)

The provisions of section 80IC shall be applicable on the enterprises where the gross total income includes any profits and gains derived from any:

(i) business of manufacturing or producing any article in any notified specified area in the state of Himachal Pradesh and Uttaranchal not being an article prescribed in Schedule XIII or

(ii) business of producing or manufacturing any article prescribed in Schedule XIV in any area other than a notified specified area in the said States.

Conditions: Following conditions are to be satisfied:

(i) The industrial understanding is not formed by splitting up or the reconstruction of a business already in existence.

Exception: the aforesaid condition of new undertaking is not applicable where the business is reestablished, reconstructed etc.

(ii) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

(iii) It begun or begins manufacture of or production of an article or thing or undertakes substantial expansion during the period beginning from 01-07-2003 and ending before 01-04-2012.

Answer 2(a)(iii)

Jewellery is treated as an asset under Section 2(ea)(iii) of the Wealth Tax Act.

Jewellery includes the following:

(a) Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones and whether or not worked or sewn into any wearing apparel.

(b) Precious or semi-precious stones, whether or not set in any furniture, utensils or other articles or worked or sewn into any wearing apparel.

Urban land: This is an asset vide Section 2(ea)(v)

Urban land means land situated in the following area:

(a) Land situated within municipality: Land situated in any area which is comprised within the jurisdiction of a municipality which has a population of not less than 10000 according to the last preceding census of which relevant figures have been published before the valuation date.

(b) Land situated outside municipality but within notified area : Land situated in any

area within such distance (not being more than 8 km) from the local limits of any municipality, referred to above, as the Central Government may having regard to the extent of and scope for urbanization of that area and other relevant considerations specify.

Municipality includes municipal corporation notified area committee, town planning committee, town committee or a municipality known by any other name.

Answer 2(b)(i)

Points of Difference	271AA	271B
Types of default:	Provides for penalty for failure to keep and maintain information and documents in respect of international transactions as required under section 92D(1) or (2).	Provides for penalty for failure to get accounts audited as required under section 44AB
Minimum Penalty	A sum equal to 2% of the value of each international transaction.	One-half per cent of total sales, turnover or gross receipts or Rs.1 lakh whichever is less.
Maximum Penalty:	No maximum	Rs.1 lakh
Authority Levying the Penalty :	Assessing Officer or Commissioner (A).	Assessing Officer

Answer 2(b)(ii)

Section 80-IE contains special provisions in respect of certain undertakings in North-Eastern states. As per the said provisions “substantial expansion” means increase in the investment in the plant and machinery by at least twenty five per cent of the book value of Plant and Machinery (before taking depreciation in any year) as on the first day of the previous year in which the substantial expansion is undertaken.

Section 80-IC contains special provisions in respect of certain undertakings or enterprises in certain special category of states. In addition to the North-Eastern states, Sikkim and Himachal Pradesh or Uttarakhand fall in this category.

“Substantial expansion” means increase in the investment in the Plant and Machinery by at least fifty per cent of the book value of Plant and Machinery (before taking depreciation in any year) as on the first day of the previous year in which the substantial expansion is undertaken.

Answer 2(c)

In its ordinary meaning dividend is the sum paid to a shareholder proportionate to his

shareholding in a company out of the total divisible profits. However, under section 2(22) following disbursements are also treated as dividend if they are paid by a company to a shareholder to the extent of accumulated profits:

- (i) Any distribution by a company to the extent of accumulated profits involving the release of the assets of the company;
- (ii) Distribution of debentures/deposit certificate to shareholders and bonus shares to preference shareholders.
- (iii) Distribution to shareholders on liquidation of the company;
- (iv) Distribution on reduction of share capital;
- (v) Loans or advances by a closely held company to certain shareholders/ concerns.

Question 3

(a) Examine whether penalty can be levied under section 271(1)(c) even in a case where addition of concealed income does not result in taxable income but only reduces the returned loss keeping in view Explanation 4 to section 271(1)(c) and cite relevant case law, if any. (5 marks)

(b) Rana Iron Ltd. (RIL) provided 'free meal coupons' to its employees. RIL entered into an agreement with Atul who was in the business of providing such coupons. The employees were provided with coupons of Atul at the rate of Rs.50.00 per day per employee. RIL claimed that the value of the said coupons was not taxable perquisite within the meaning of Rule 3(7)(iii) of the Income-tax Rules, 1962.

Assessing Officer found that some of the coupons were misused for purchase of grocery and cosmetic items. It was estimated by the Assessing Officer that the misuse amounted to 30% of the amount of the 'free meal coupons' considered it as a perquisite to the employees. The assessee company was held to be in default for non-deduction of TDS from the employees to the extent of the value of the alleged perquisite and held liable for levy of interest towards the short deduction of tax and levy of penalty. RIL contested the same.

Examine whether the assessee company had defaulted in its responsibility to deduct appropriate amount of tax from the employees. Cite relevant case law. (5 marks)

(c) Pankaj is holding 15% equity shares of Young India Ltd., a company in which public is not substantially interested. Pankaj needs Rs.5,00,000 to purchase a car for his personal use. He can borrow at a interest of 5% per annum from his company or from a bank @ 10% per annum interest. The company has sufficient accumulated profit to advance the requisite loan. Suggest the better alternative to Pankaj from income-tax point of view. (5 marks)

Answer 3(a)

Section 271(1)(C) relates to failure to furnish returns, comply with notices and concealment of income etc.

Section 271(1)(c) empowers the Assessing Officer or the Commissioner of Appeal to levy penalty when he is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income.

The basis for levying penalty for concealment of income is "income sought to be evaded".

Explanation 4 to Section 271(1)(c), inter-alia, makes it clear that in cases where the

amount of income, in respect of which particulars have been concealed or inaccurate particulars have been furnished, has the effect of reducing the loss declared in the return or converting that, loss into income, the amount of tax sought to be evaded would mean the tax would have been chargeable on the income in respect of which particulars have been furnished, had such income been the total income.

Explanation 4 is retrospective in nature and applicable retrospectively. When final assessed income is also loss penalty under section 271(1)(c) can be levied.

The Supreme Court held in :

[*CIT-I Ahmedabad vs. Gold Coin Health Food (P) Ltd.* decided on 18th August 2008]

That during the period 1.4.1976 to 1.4.2003 penalty was leviable even in a case where addition of concealed income reduces the returned loss and *Explanation 4* to Section 271(1)(c) is clarificatory and not substantive.

Hence penalty can be levied in the case referred to.

Answer 3(b)

Non transferable meals coupons distributed by the assessee company to its employees of the value of Rs. 50 per day which were usable only at specified eating joints not being taxable as perquisites in the hands of the employees in view of proviso to Rule 3(7)(iii) no default can be ascribed to the assessee for not deducting tax at source in respect of said meal coupons merely because some employees misused the facilities.

Thus there was no default on the part of Assessee (Employer Company).

The facts are similar to those in *CIT vs. Reliance Industries Ltd.* [2008] 175 Taxman 367 (Guj)] decided on 11.9.2008.

Answer 3(c)

If Mr. Patel has taken loan from a closely held company in which he has 15% equity shares, it will be treated as deemed dividend under section 2(22)(e) and loan and advance shall be considered as deemed dividend in the hands of shareholder to the extent of accumulated profits excluding capitalized profits. Hence, Mr. Patel has to pay interest at 5% as well as income tax on deemed dividend i.e., Rs.5,00,000 as per prescribed rate. Such dividend is not tax free under Section 10(34).

Therefore, it is beneficial for Mr. Patel to borrow from the Bank rather than taking loan from the Company.

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) Non-dutiable goods means —

(a) The product not given in the Tariff Act

- (b) *The product given in the Tariff Act*
 - (c) *The product given in the Tariff Act with rate of duty*
 - (d) *The product given in the Tariff Act with zero rate of duty.*
- (ii) *At the time of manufacture of Product-X, the rate of basic excise duty (BED) was 14% while at the time of removal the rate of duty was 9%. The duty applicable for the Product-X will be —*
- (a) 14%
 - (b) 9%
 - (c) 11.5%
 - (d) *None of the above.*
- (iii) *Excisable goods can be removed for export without payment of duty by using —*
- (a) *B-3 bond*
 - (b) *B-2 bond*
 - (c) *B-4 bond*
 - (d) *B-7 bond.*
- (iv) *Registration under the central excise law is not required if the turnover of an SSI unit is —*
- (a) *Less than Rs. 150 lakh*
 - (b) *Less than Rs. 90 lakh*
 - (c) *Less than Rs. 10 lakh*
 - (d) *Less than Rs. 100 lakh.*
- (v) *In the case of Excise Audit, 2000, selection of the assessee is based on—*
- (a) *Risk factor*
 - (b) *Value of goods*
 - (c) *Merit of the assessee*
 - (d) *Any other factor.*
- (vi) *Yearly audit is applicable where excise duty paid in cash is more than—*
- (a) *Rs. 3 crore*
 - (b) *Rs. 1.5 crore*
 - (c) *Rs. 1 crore*
 - (d) *Rs. 4 crore.*
- (vii) *Deemed export means —*
- (a) *Export through agent*
 - (b) *Sale of goods to UN agencies*
 - (c) *Local sale to a foreigner*
 - (d) *None of the above.*
- (viii) *As per Rule 7 of the drawback rules, the special brand rate of duty drawback should be applied —*
- (a) *Within 90 days from the date of exports*
 - (b) *Within 60 days from the date of exports*
 - (c) *Within 30 days from the date of exports*
 - (d) *Within 45 days from the date of exports.*

(1 mark each)

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

(i) Excisable goods consumed within the factory for manufacture of final product is called _____.

(ii) Goods included in the _____ schedule of the Central Excise Act, 1944 are the same on which excise duty is payable under section 4A.

(iii) MRP provisions are not applicable for packaged commodities meant for _____.

(iv) Duty rebate is not allowed if the rebate amount is less than _____.

(v) As per section 2(38) of the Customs Act, 1962, 'stores' means goods for use in a _____.

(vi) Anti-dumping duty is imposed when export price is _____ than normal price in the exporting country.

(vii) As per section 27 of the Customs Act, 1962, interest on delayed refund is payable after expiry of _____ months from the date of receipt of such order.
(1 mark each)

(c) Following particulars are available in respect of consignment of goods imported:

(i) Cost at the factory of the exporter: US\$ 20,000

(ii) Carriage/freight/insurance upto the port of shipment in the exporter's country: US\$ 400

(iii) Charges for loading on to the ship at the shipping port: US\$ 100

(iv) Freight charges of the ship for transport upto the Indian port: US\$ 1,200

Compute the assessable value for the purpose of levy/payment of customs duty.
(5 marks)

Answer 4(a)

- (i) (d) The product given in the Tariff Act with zero rate of duty
- (ii) (a) 9%
- (iii) (a) B-3 bond
- (iv) (a) Less than Rs.150 lakh
- (v) (a) Risk factor
- (vi) (a) Rs.3 crore
- (vii) (b) Sale of goods to UN agencies
- (viii) (c) Within 60 days from the date of exports.

Note: In Q no. 4(a)(iii), The option of B1 bond (which is correct) is not given. As per notification no. 42/2001 CE(NT) dated 26/06/2001, Form specified in annexure for Excisable goods which can be removed for export without payment of duty is 'B1 bond'. However in case the goods dispatched to the warehouse and export there from Form B-3 should be used hence the marks should be given to those who opted for B-3.

Answer 4(b)

- (i) Captive consumption
- (ii) First and Second Schedule
- (iii) Industrial or Institutional Consumers

- (iv)Rs.500
- (v)Vessel or Aircraft
- (vi)Less
- (vii)3 months

Answer 4(c)

Computation of Assessable Value

	US Dollars	
Cost at the Factory of the exporter	20,000	
Add:		
Carriage/freight/insurance upto the port of shipment in the exporter's country		400
Charges for loading on to the ship at the shipping port	<u>100</u>	
FOB	20,500	
Add: Freight charges of the ship for transport upto the Indian Port	1,200	
Add: Insurance @ 1.125% of FOB	<u>231</u>	
CIF		21,931
Add: Landing charges @ 1% of CIF	<u>219</u>	
Assessable Value	<u>22,150</u>	

To be converted into INR as per exchange rate notified by CBEC under section 14(3)(a) of the Customs Act.

Question 5

(a)Determine the basis of valuation under section 4 or section 4A of the Central Excise Act, 1944 in the following cases, citing case law wherever available —

(i)Packaged products with MRP printed/marked thereon, exported to Nepal.

(ii)A packaged commodity covered under MRP notification and also the Standard of Weights and Measures Act, 1976 unpacked and shown to the customer, tested and then sold to the customer.

(iii)Chocolates distributed as free gift along with his bottles of soft drinks.

(iv)Ice creams sold in bulk to hotels.

(v)Telephone instruments supplied in bulk to a service provider with MRP duly marked and the purchaser (i.e., the service provider) lent the instruments to its customers/subscribers retaining ownership. (5 marks)

(b)Examine the powers of the Central Government to exempt partly or wholly any goods subject to customs duty, and also whether the withdrawal thereof would come under the purview of the doctrine of estoppel. Cite relevant case law, if available. (5 marks)

(c)What is the theory of 'unjust enrichment' ? What are statutory provisions to stop such practices ? (5 marks)

OR

Discuss the circumstances under which no custom duty is levied.

(5 marks)

Answer 5(a)

(i)MRP provisions do not apply to export of goods to Nepal. Valuation is to be done as per section 4 of the CEA. Such goods are not liable to confiscation if MRP is not printed *Gillette India Ltd. v. CCE* [(2006) 193 ELT 331 CESTAT]

(ii)A pre-packaged commodity is such that a consumer purchases it in packed form without opening it. In case of refrigerators, ACs these are packed in factory for safe transport. These are shown to the customer, tested and then sold. The question arises whether they are packaged commodities. In *Whirlpool of India Ltd. v. UOI* [(2001)(137) ELT 42] it was held that provisions of declaration of MRP are applicable. Hence Section 4A of CEA is applicable.

(iii)Chocolate is covered under MRP Provisions. Nature of sale is not relevant, requirement to print MRP important under SWM Act, 1976 hence the provisions of section 4A shall be applicable. Same upheld in *Jayanti Food Processing v. CCE* [(2007) ELT 327(SC)] case.

(iv)Ice cream is sold in bulk to hotels and not intended for retail sale. Valuation will be as per section 4 of CEA and not on MRP basis as confirmed in. *Monsanto Manufacture (P) Ltd.* 2006 (193) ELT 495 (T-D)

(v)It was held by the CESTAT that Valuation is to be done under Section 4A on basis of MRP Vide decision in *ITEL Industries P Ltd. v. CCE* 2004 (163) ELT 219 (CESTAT 2 VI decision).

Answer 5(b)

Section 25: Power to grant exemption from duty

If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

The Central Government in public interest may by special order exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

The Central Government has powers to modify or withdraw the exemptions. Such a modification or withdrawal will not affect the principle of promissory estoppel. It has been decided in *Indian Charge Chrome* (1999) SC that power to exempt in public interest includes power to withdraw, modify or rescind exemption in public interest.

Answer 5(c)

Principle of unjust enrichment

The manufacturer of goods collects the duty from the purchaser and thus does not bear the incidence of Central Excise duty himself. In such a situation, if a refund of excise duty is made to the manufacturer for any reason whatsoever, such a manufacturer shall be enriched unjustly. In other words, he will get a refund of duty, the incidence of which he has already passed on to the buyer. On principle of equity, it is quite obvious that the refund is to be granted to a person who had actually borne the incidence of duty and not to any person who has not borne the incidence of duty.

Statutory provision to stop the practice of Unjust Enrichment:

Section 11B, was, therefore, amended from 19-09-1991, to suitably incorporate the principle of unjust enrichment expressly therein.

On a claim of refund of duty of excise and interest in the prescribed form to the Assistant Commissioner (A.C.) or Deputy Commissioner (D.C.) of Central Excise before the expiry of 1 year from the relevant date along with relevant documents, refund will be sanctioned and if incidence of duty has been already passed on to the buyer, the amount will be credited to the Consumer Welfare Fund, established under section 12C of the Central Excise Act. Where duty has been paid under protest, under para 4 Part III Chapter 13 of CBEC Excise Manual, the limitation of one year shall not apply.

OR

Alternate Answer 5(c)

In the following circumstances no custom duty will be levied:

- (i) Under Section 13 no duty will be levied on pilfered goods after unloading thereof and before the proper officer has made an order of clearance.
- (ii) When goods are damaged or defoliated before or during the course of unloading.
- (iii) When the warehoused goods are damaged before their actual clearance from warehouse.
- (iv) Where goods are lost or destroyed due to natural causes like fire, flood etc;
- (v) Where goods are abandoned by the importer.
- (vi) If Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.

Question 6

(a) A small scale manufacturer has achieved turnover of Rs.1.52 crore during financial year 2009-10. Normal duty payable on the product is 10% plus education cess. Compute the excise duty payable by SSI unit—

(i) If the unit wants to avail CENVAT credit; and

(ii) If the unit wants to avail exemption and CENVAT credit.

(Note : The turnover is without taxes and duties.) (5 marks)

(b) What is 'importer exporter code' (IEC) number ? What is the procedure for obtaining IEC number? (5 marks)

(c) When does e-payment of duty become mandatory under the Central Excise Act, 1944? (5 marks)

Answer 6(a)

(i) If the unit wants to avail CENVAT Credit on total turnover:

In this case, the amount of CENVAT Credit can be availed from the amount of clearance

Basic Excise duty = 1.52 crores x 10% = 15,20,000

Education cess = 15,20,000 x 2% = 30,400

SHEC = 15,20,000 x 1% = 15,200

Total Excise duty = Rs. 15,65,600

(ii) If the unit wants to avail exemption and CENVAT Credit

Total Turnover	=	15200000	
Less Exemption	=	15000000	
Net Dutiable	=	200000	
Basic Excise duty	=	200000 x 10%	= 20000
Education Cess	=	20000 x 2%	= 400
SAH Education Cess	=	20000 x 1%	= 200
Total Excise Duty	=	Rs.20600.	

Answer 6(b)

IEC Code is unique 10 digit code issued by DGFT – Director General of Foreign Trade, Ministry of Commerce, and Government of India to Indian Companies. To import or export in India, IEC Code is mandatory. No person or entity shall make any Import or Export without IEC Code Number.

Procedure for obtaining IEC

Application for IEC can be obtained from any Zonal and Regional office of the Director General of Foreign Trade. The same can be down loaded from www.dgft.gov.infor. The application should be accompanied by following documents:

- (i) A certificate from Bank in the format 18A.
- (ii) Self certified copy of PAN
- (iii) Self addressed envelop.
- (iv) In case of individual certified copy of date of birth, in case of firm notarized partnership deed and in the case of company extract of Board's resolution;
- (v) Two copies of passport size photo of the applicant attested by the banker.

Fee: Prescribed fee for IEC is Rs.250 which can be deposited in the form of DD drawn in favour of Zonal DGFT.

The application should be submitted in duplicate and each page of the application must be signed by the applicant. If the application is found in order a ten digit IEC number is allotted by DGFT to any bonafide person/firm/company for carrying out import/export.

Answer 6(c)

Electronic payment of excise duty has been introduced w.e.f. 1.4.2007. it is mandatory for every assessee who has paid excise duty exceeding Rs.50 lakhs during the previous year immediately preceding the current year.

The due date of e-payment of tax is 6th of the following month by the ordinary manufacturers and by 16th of the following month in the case of SSI. In case of month of March, the due date is 31st March.

E-payment can be made at any time from any where through the system of Electronic Accounting System in Excise and Service Tax (EASIST). All payments effected upto 8 p.m. will be accounted for the day as that day's receipt. Any payment effected after 8 p.m. will be accounted as next day receipt.

Question 7

(a) Differentiate between the following :

(i) 'Excise audit under section 14A' and 'special audit under section 14AA' of the Central Excise Act, 1944.

(ii) 'Preferential rates of customs duty' and 'lower customs duty under trade agreements' under the Customs Tariff Act, 1975.

(iii) 'Transit of goods without payment of duty' and 'transshipment of goods without payment of duty' under the Customs Act, 1962. (3 marks each)

(b) Compare and contrast 'Rule 8' and 'Rule 9' of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. (3 marks)

(c) What are the provisions of CENVAT credit on capital goods ? Explain with relevant case law. (3 marks)

Answer 7(a)(i)

Audit under section 14A

-To be conducted by a Qualified Cost Accountant or Chartered Accountant holding certificate of practice, nominated by the Chief Commissioner of Central Excise.

-Special Audit can be ordered by Assistant/Deputy Commissioner only with the prior approval of Chief Commissioner CE, having regard to the nature and complexity of the case, and the interest of the revenue.

-To ensure the accuracy of the Assessable value, proper certification, wherever required, correctness of cost of production as per cost accounting standard issued by the ICWAI.

Special Audit under Section 14AA

-To be conducted by a Cost Accountant or Chartered Accountant holding certificate of practice, nominated by the Commissioner of Central Excise.

-Special Audit can be ordered by commissioner CE

-To ensure that CENVAT Credit is utilized within normal limits and CENVAT Credit has not been improperly availed or utilized by reason of fraud, collusion or any willful misstatement or suppression of facts.

In both the cases, the expenses and fees for conducting the audit will be paid by the Excise department to the Cost Auditor.

Answer 7(a)(ii)

Preferential Rates of Customs Duty:

Some countries have been declared as 'preferential areas' like Mauritius, Seychelles and Tonga. Goods produced in these countries are eligible for preferential rates under section 4 of the Customs Tariff act. The Tariff provides two columns—one for 'standard Rate and other for 'preferential areas'.

Preferential rates of duty for certain goods imported from Bangladesh, China, Korea and Sri Lanka under Asia Pacific Trade Agreement have been specified in Notification No.72/2005 dated 22.7.2005;

Lower Customs Duty under Trade Agreement:

Section 5(1) of Customs Tariff Act authorizes Central Government to issue notification charging lower rate of duty, if it has entered into a trade agreement with a foreign country.

The owner must make claim for lower duty and should produce necessary evidence. Central Government is empowered to make rules for the 'determination of origin'. Besides producing certificate of origin from the prescribed authority rules insist on specific value addition in the country of manufacture normally 50%.

Answer 7(a)(iii)

Transit of goods

Transit of goods without payment of duty is covered under the provisions of Section 53 of the Act.

Goods mentioned in the Import Manifest or Import report as for transit in the same conveyance to any place outside India or any custom station, will be allowed to be transited so without payment of duty.

Transshipment of Goods

Transshipment of Goods without payment of duty is covered under the provisions of Section 54 of the Act

In the case of transshipment, a bill of transshipment has to be presented to the proper officer in the prescribed form.

In both the cases in the event that the destination after transit or transshipment finally is an Indian customs station appropriate duty is to be paid as per Section 55.

In both the cases the destination port may be Indian port or Foreign Port but the transit/transshipment port is necessarily Indian.

Answer 7(b)

Differences between Rule 8 and Rule 9 of the CE Valuation (Determination of Price of Excisable Goods) Rules 2000 are as follows:

Rule 8:

- Relates to captive consumption.
- Where the excisable goods are not sold by the assessee but used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred ten per cent of the cost of production or manufacture of such goods.

Rule 9:

- Valuation when goods sold through a related person.
- When the assessee so arranges that the excisable goods are not sold except to or through a person who is related in the manner specified in either of sub-clause (ii)(ii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not such buyers, to buyers (being related persons) who sells such goods in retail.

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production of, or manufacture of articles the value shall be determined as per Rule 8.

Answer 7(c)

CENVAT Credit is also available on capital goods. There are some provisions which are common but there are some specific provisions with regard to CENVAT Credit on capital goods which are as follows:

(i) The CENVAT Credit in respect of Capital Goods received in a factory or in the premises of the provider of output services at any point of time in a given financial year shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year.

Proviso:

The CENVAT Credit in respect of Capital Goods shall be allowed for the whole amount of the duty paid on such Capital Goods in the same financial year, if such Capital Goods are cleared as such in the same financial year.

Further the CENVAT credit of additional duty leviable under sub-section (5) of Section 3 of C. T Act, in respect of capital goods shall be allowed fully immediately on receipt of the capital goods in the factory of a manufacturer.

(ii) The balance of CENVAT Credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under Hd. No.6805 and S.H. No.6804 of the I Schedule to the Central Excise Tariff Act, are in the possession of the manufacturer of final products or provider of output service in such subsequent years.

Case Law: *Roots Cast (P) Ltd., 2007 (216/3) ELT 448 (T.Ch.), Suprajit Engineering Ltd., 2007 (6) STR 170 (T.Bang.), Prasad Machinery (P) Ltd. 2007 (218-3) ELT 445 (T.Ahmd.)*

PART—C

Question 8

Attempt **any five** of the following:

(i) Discuss the scope of the provisions the Central Government may make under section 90(A)(1) of the Income-tax Act, 1961 in respect of an agreement between specified associations. (4 marks)

(ii) Compute the 'arm length price' (ALP) in the following cases :

(a) Medical Instruments Ltd. is a 100% Indian subsidiary of a US company. The parent company sells one of its products to the Indian subsidiary at a price of US\$ 100 per unit. The same product is sold to unrelated buyers in India at a price of US\$ 125 per unit.

(b) The US parent company sells the same product to an unrelated company in India @ US\$ 80 per unit. (2 marks each)

(iii) Compute the income-tax in the following cases :

(a) Royalty of Rs.10 lakh received by a foreign company from an Indian concern in

pursuance of an agreement approved by the Central Government in the previous year 2007-08.

(b)Rs.10 lakh long-term capital gains received by an overseas financial organisation on transfer of units purchased in foreign currency. (2 marks each)

(iv)What is the procedure for making an application for obtaining advance rulings under section 245Q of the Income-tax Act, 1961? (4 marks)

(v)Discuss the steps for calculating relief under double taxation treaty. (4 marks)

(vi)State, with reasons in brief, whether the following statements are correct or incorrect:

(a)A tax heaven is a country where there is lot of scope for tax evasion.

(b)A non-resident is not liable to pay income-tax on the income earned and received outside India.

(c)Section 92 of the Income-tax Act, 1961 empowers income-tax officer to penalise a non-resident for tax avoidance.

(d)As per section 115A of the Income-tax Act, 1961 where the total income of a foreign company includes any dividend, income-tax payable on such dividend will be at the rate of 30%. (1 mark each)

Answer 8(i)

Section 90A(1) provides as under :

Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such provisions.

Following is the scope of such provisions:

(a)for the grant of relief in respect of :

(i)income on which have been paid both income tax under this Act and income-tax in any specified territory outside India; or

(ii)income-tax chargeable under this Act and under the corresponding law in force in the that specified territory outside India to promote mutual economic relations, trade and investment; or

(b)for the avoidance of double taxation under this Act and under corresponding law in force in that specified territory outside India; or

(c)for the exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that specified territory outside India or investigation of cases of such evasion or avoidance; or

(d)for recovery of income-tax under this Act and under the corresponding law in force in that territory outside India

(e)when provisions have been made/modified as above, then in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to the assessee.

Answer 8(ii)(a)

Computation of Arm's Length Price:

- Price charged by the US parent company for supply to
- its 100% Indian subsidiary per unit 100 US dollars
- Sale price to unrelated buyers in India per unit 125 US dollars

Here there is no loss of revenue to the Government due to the International transaction hence there is no need to calculate the Arm's Length Price.

Answer 8(ii)(b)

Computation of Arm's Length Price:

- In this situation price charged by the US Parent
- Company for supplies to an unrelated Indian buyer per unit 80 US dollars
- Price charged to the Indian subsidiary per unit 100 US dollars

Applying comparable uncontrolled price method

Arm's length price per unit 80 US dollars

Assumption: The transactions between the US Parent Company and its Indian subsidiary are not on principal to principal basis.

Answer 8(iii)(a)

Agreement was approved by the Central Government in Previous Year 2007-08 :

For agreements approved after 31.5.2005

Income-tax rate applicable on Royalty is 10%

Royalty amount Rs.10 lakhs

Income Tax @ 10% Rs.1 lakh under section 115A(1)(b).

Answer 8(iii)(b)

As per Section 115AB the Income-tax rate is 10%

Long-term Capital Gain = Rs.10 lakhs

Income-tax @ 10% = Rs. 1 lakh

If units are Equity Oriented Units then the LTCG shall be exempt under section 10(38)

In both the above cases question 8(iii)(a) & (b) Education Cess @ 2% and SHEC @1% are also payable and surcharge @ 2.5% also applicable where income exceeds Rs.1 Crore.

Answer 8(iv)

Application for Advance Ruling

(i)An application for obtaining advance ruling shall be made in quadruplicate in Form No.34C or 34D or 34E as the case may be and shall be verified in manner indicated therein.

(ii)The application should clearly state the question on which the advance ruling is being sought.

(iii)The application must be accompanied by a fee of Rs.2500 in favour of the Authority

of Advance Ruling.

(iv) The application and its annexures should be signed by the person making application or by authorized representative;

(v) The application should be addressed to the Secretary and submitted either in person or by registered post.

Answer 8(v)

Steps for calculating relief under Double Taxable Treaty:

(i) Calculate tax on total income inclusive of the foreign income on which relief is available. Claim any relief allowable under the provision of Income Tax Act including rebate under section 88E but excluding relief due under Section 90, 90A and 91.

(ii) Add surcharge if applicable plus education cess plus SHEC after claiming rebate.

(iii) Calculate average rate of tax paid by dividing the tax computed in (ii) above with the total income (inclusive of such foreign income) in India.

(iv) Calculate average rate of tax of the foreign country by dividing the tax paid in foreign country by the whole amount of the income assessed thereat.

(v) Claim relief from tax payable in India at average rate of tax in India or at average rate of tax in foreign country, whichever is less.

Answer 8(vi)

(a) Incorrect : A tax heaven is a place where tax rate is least.

(b) Correct : A non-resident is liable to pay tax only on income received and earned in India.

(c) Incorrect : Section 92 of the Income Tax Act, 1961 gives Income Tax Officer the power to compute the income from international transaction having regard to Arm's Length Price.

(d) Incorrect : The rate of tax on dividend income earned by a foreign Company is 20%.

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.

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 2011-12, unless stated otherwise.

PART A

(Answer ANY TWO questions from this part)

Question 1

- (a) Write the most appropriate answer from the given options in respect of the following :
- (i) Which schedule to the Constitution of India indicates bifurcation of powers to make laws, between Union government and State governments —
 - (a) First Schedule
 - (b) Seventh Schedule
 - (c) Eighth Schedule
 - (d) Twelfth Schedule.
 - (ii) Which article of the Constitution of India provides that no tax shall be levied or collected except by authority of law —
 - (a) Article 265
 - (b) Article 268
 - (c) Article 269
 - (d) Article 274.
 - (iii) Companies in which public are substantially interested are also referred to as —
 - (a) Indian companies
 - (b) Investment companies
 - (c) Widely-held companies
 - (d) Closely-held companies.
 - (iv) In respect of which area tax planning cannot be attempted at the time of setting-up of new business entity —
 - (a) Form of organisation
 - (b) Locational aspects
 - (c) Nature of business
 - (d) Corporate restructuring.
 - (v) Which return of income cannot be revised by the assessee —
 - (a) Return of loss
 - (b) Defective return

- (c) *Belated return*
- (d) *Revised return.* (1 mark each)
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *The period from 1st April, 2010 to 31st March, 2015 would be covered by the _____ Finance Commission.*
- (ii) *A company whose gross total income consists mainly of income which is chargeable under the heads 'income from house property', 'income from capital gains' and 'income from other sources' is called _____ .*
- (iii) *Surcharge at the rate of _____ is applicable in case total income of a foreign company exceeds ₹ 1 crore for the assessment year 2011-12.*
- (iv) *Unabsorbed losses and unabsorbed depreciation cannot be allowed to be carried forward and set-off in the hands of the amalgamated company, except in the cases prescribed under section _____ of the Income-tax Act, 1961.*
- (v) *The right to file appeals to the Commissioner (Appeals) against the orders of assessing officer is _____ to the department.* (1 mark each)
- (c) *Examine whether wealth-tax is chargeable in respect of net wealth of following persons under the Wealth-tax Act, 1957 :*
- (i) *Hindu deity*
- (ii) *Holder of an impartible estate*
- (iii) *Partnership firm*
- (iv) *Association of persons*
- (v) *Trustees of a private trust.* (1 mark each)

Answer 1(a)(i)

- (b) *Seventh Schedule*

Answer 1(a)(ii)

- (a) *Article 265*

Answer 1(a)(iii)

- (c) *Widely held companies*

Answer 1(a)(iv)

- (d) *Corporate restructuring*

Answer 1(a)(v)

- (c) *Belated return*

Answer 1(b)

- (i) The period from 1st April, 2010 to 31st March, 2015 would be covered by the **Thirteenth** Finance Commission.
- (ii) A company whose gross total income consists mainly of income which is chargeable under the heads 'income from house property', 'income from capital gains' and 'income from other sources' is called **Investment Company**.
- (iii) Surcharge at the rate of **2.5%** is applicable in case total income of a foreign company exceeds ₹1 crore for the assessment year 2011-12.
- (iv) Unabsorbed losses and unabsorbed depreciation cannot be allowed to be carried forward and set-off in the hands of the amalgamated company, except in the cases prescribed under section **72A** of the Income-tax Act, 1961.
- (v) The right to file appeals to the Commissioner (Appeals) against the orders of assessing officer is **not available** to the department.

Answer 1(c)

- (i) **Hindu deity** : Yes, Hindu deity is chargeable to wealth tax. Trust established for the benefit of Hindu deities are deemed to be individual assessee under the Act and hence chargeable to Wealth-tax. [*B.C. Gupta & Sons Ltd.*, (1990) 182 ITR 240 (Guj)].
- (ii) **Holder of an impartible estate** : Yes, holder of impartible estate are chargeable to wealth tax. Section 4(6) provides that the holder of impartible estate is deemed to be individual owner of all properties, comprised in the estate.
- (iii) **Partnership firm** : No, partnership firms are not chargeable to wealth tax. Wealth tax is chargeable to individuals, HUF and companies only. All other persons are not chargeable to wealth tax.
- (iv) **Association of persons** : No, Association of persons (AOP) is not liable to wealth tax. Where the shares of the members are determinate or known then members of an AOP are liable to wealth tax in respect of their share in the property of the AOP.
- (v) **Trustees of a private trust** : Yes, Trustees of the private trust are chargeable to wealth tax. A trust is not a taxable entity under the Act as it is neither an individual, nor a HUF and nor a company, but the trustees of a private trust (not established for charitable purpose) are assessable as individuals [*Trustees of Gordhandas Govindram Family Charity Trust v. CIT* (1973) 88 ITR 47 (SC)].

Question 2

- (a) *Star Gas Ltd. commenced operations of the business of laying and operating a cross country natural gas pipeline network for distribution on 1st April, 2010. The company incurred capital expenditure of ₹ 1,490 lakh (including cost of financial instrument ₹ 2 lakh) during the period January 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 financial year 2010-11, it incurred capital expenditure of ₹6,600 lakh (including cost of land ₹1,100 lakh) exclusively for the above business. Compute the amount of deduction under section 35AD for the assessment year 2011-12, assuming that the company has fulfilled all the conditions specified in section 35AD. (4 marks)

- (b) PQR, a partnership firm, has 3 partners namely Pankaj, Qureshi and Robert. The firm has paid salary of ₹ 1.5 lakh per annum to each of its partners during the previous year 2010-11 and the same is authorised by the partnership deed. The net profit of the firm as shown in the profit and loss account computed in the manner laid down in Chapter IV-D of the Income-tax Act, 1961 is ₹ 6 lakh after providing for salary to the partners. Compute the amount of deduction of remuneration paid to partners assuming that Qureshi is a non-working partner. (5 marks)
- (c) Discuss with the help of a decided case law, if any, whether the claim made by the assessee in the following separate cases is correct or incorrect :
- An assessee has paid the entire amount of tax due for the year by way of self-assessment tax, but filed the return of income belatedly. The assessee claims that interest under section 234A is not leviable on him.
 - An assessee rendered certain services from abroad without parting with technology. The assessee does not have any permanent establishment in India. He claims that he is not liable to pay tax on income from rendering such services. (3 marks each)

Answer 2(a)

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

	₹ (in lakhs)
Capital expenditure incurred during Financial Year 2010-11 (excluding the cost of land)	
₹ 6,600 lakh – ₹ 1,100 lakh	5,500
Capital expenditure incurred prior to commencement of business and Capitalized on 1.4.2010 (excluding cost of financial instrument)	
₹ 1,490 lakh – ₹ 2 lakh	<u>1,488</u>
Total deduction under section 35AD for the Assessment Year 2011-12	<u>6,988</u>

Answer 2(b)

Computation of book profit of the firm

	₹
Net profit as per Profit & Loss Account	6.0 lakh
Add: Salary paid to all partners (₹ 1.5 lakh x 3)	<u>4.5 lakh</u>
Book Profit	<u>10.5 lakh</u>

Computation of Amount of deduction under section 40(b) for remuneration to partners:

	₹
On first ₹ 3 lakh of book profit @ 90%	2,70,000
On balance ₹ 7.5 lakh of book profit @ 60%	4,50,000
(i) Maximum limit of remuneration	7,20,000
(ii) Actual remuneration to working partners	
Pankaj and Robert (₹ 1.5 lakh x 2) = ₹ 3,00,000	
Allowable deduction [lower of the (i) & (ii)]	<u>3,00,000</u>

Answer 2(c)(i)

Correct, interest under section 234A is not leviable on the assessee. The honorable Supreme Court in *Dr. Prannoy Roy and another v. CIT* (2009) 179 Taxman 53 (SC) had held that where the assessee had paid the taxes before the due date of filing the return but could not file the return for reasons beyond his control but filed it belatedly, **the charge of interest u/s 234A is not valid as in such case there is no loss to the revenue**. Further, interest under section 234A, being compensatory in nature, shall be levied only where the tax has not been deposited prior to the due date of filing of the return. Accordingly, where the entire amount of self assessment tax was paid before the due date for filing return of income, interest under section 234A for delay or default in filing of return of income shall not be levied.

Answer 2(c)(ii)

Correct, the assessee is not liable to pay tax. The AAR in case of Invensys Systems Inc. (2009) 317 ITR 438 ruled that only where there is parting with technology, the payment would be regarded as technical service. In case of any other services rendered from abroad without parting with technology, there is no liability for the non-resident to pay tax unless the services are rendered by the permanent establishment of the assessee in India.

Question 3

(a) *Singhai Airlines Ltd. sold tickets to travel agents in India and allowed them to retain the amount collected by them in excess of net fare of ticket under a passenger sales agency agreement. Examine whether the above transaction amounts to commission and liable to deduction of tax at source. Cite relevant case law.* (5 marks)

(b) *Dhaval was in the business of manufacturing customised kitchen equipments. He was also the managing director and held nearly 65% of the paid-up share capital of Aarav Ltd. A substantial part of the business of Dhaval, was obtained through Aarav Ltd. For this purpose, Aarav Ltd. could pass on the advance received from its customers to Dhaval to execute the job work entrusted to him.*

The assessing officer held that the advance money received by Dhaval is in nature of the loan given by Aarav Ltd. to him, and accordingly is deemed dividend within the meaning of the provisions of section 2(22)(e). The assessing officer,

therefore, made the addition by treating advance money as the deemed dividend income of Dhaval.

Examine whether the action of the assessing officer is tenable in law. Cite relevant case law. (5 marks)

- (c) *Hetal Ltd., engaged in providing cellular phone facilities to their subscribers, had been granted licenses by the Department of Telecommunication for operating in specific circles. For providing inter connection, Hetal Ltd. entered into agreement with MTNL/BSNL, which were regulated by the TRAI and under the agreement, Hetal Ltd. had to pay interconnection, access charges and port charges to the interconnection providers. The income-tax department was of the view that interconnection/port/access charges were liable for tax deduction at source in view of the provisions of section 194J and that these charges were in the nature of fees for technical services.*

Whether the contention taken by the Income-tax department are tenable in law? Discuss. Support your answer with citation of relevant case law. (5 marks)

Answer 3(a)

This case study is based on the Hon'ble Delhi High Court's judgement in the case of *CIT v. Singapore Airlines Ltd.* (2009) 213 Taxation 441 (Del.)

The Hon'ble High Court upheld the findings of the Assessing Officer that the billing analysis clearly showed that supplementary commission was received by the travel agent. The supplementary commission which was the amount retained by the travel agent was commission within the meaning of Section 194H read with the Explanation (1) to the section. Further finding of Assessing Officer that the provisions in the passenger sales agency agreement made it clear and established that the relationship between the travel agent and the airlines was that of principal and agent.

The plea submitted by the airlines that the provisions of Section 194H were not applicable as what was retained by the travel agent was in the nature of discount and not commission.

The stand taken by the company has been rejected on the following ground. The word 'discount' is normally used to describe a deduction from the full amount or value of something, especially a price whereas commission is defined in Explanation (1) to Section 194H as any payment received or receivable, directly or indirectly by an agent for services rendered acting on behalf of the airlines. In view of the fact that the payment retained by the travel agent was inextricably linked to the sale of the air ticket, it could be lead to the conclusion that payment retained which was the supplementary commission, was a commission within the meaning of Section 194H of the Act.

Hence, the retained amount is liable for tax deducted at source.

Answer 3(b)

The case study is based on the judgment of Hon'ble Delhi High Court in the case of *CIT v. Rajkumar* 318 ITR 462 (Del) 2009.

On appeal by the Revenue, the Delhi High Court upheld the decision of the Tribunal and held as under:

The word 'advance' has to be read in conjunction with the word 'loan' usually attributes

of loan are that it involves the positive act of lending, coupled with acceptance by the other side of the money as loan; it generally carries interest and there is an obligation of repayment. On the other hand in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with the word 'loan' may or may not include the obligation of repayment. If it does, then it would be a loan.

The word 'advance' which appears in the company of the word 'loan' could only mean such advance which carries with it an obligation of repayment. Trade advance which are in the nature of money transacted to give effect to a commercial transaction would not fall within the ambit of the provisions of Section 2(22)(e) of the Act.

The trade advance given to Dhaval by Aarav Ltd. could not be treated as deemed divided under section 2(22)(e) of the Act.

Answer 3(c)

The case study is based on the judgement by Hon'ble Delhi High Court in the case of *CIT v. Bharti Cellular Ltd.*, 319 ITR 119 (Del.)

On appeal filed by the Revenue, the Delhi High Court upheld the decision of the Tribunal and held as under :

The services rendered qua interconnection/port access did not involve any human interface and, therefore, the services could not be regarded as 'technical services' as contemplated under section 194J of the Act. The interconnect/port access facility was only a facility to use the gateway and the network of MTNL/other companies. MTNL or other companies did not provide any assistance or aid or help to the assessee in managing operating, setting up their infrastructure and network.

No doubt, the facility of interconnection and port access provided by MTNL/other companies was 'technical' in the sense that it involved sophisticated technology. The expression 'technical service' was not to be construed in the abstract and general sense but in the narrower sense as circumscribed by the expressions 'managing service' and 'consultancy service' as appearing in Explanation 2 to Section 9(1)(vii) of the Act. The expression 'technical service' would have reference to only technical service rendered by a human. It would not include any service provided by machines or robots.

Therefore, the interconnect charges/port access charges could not be regarded as fees for technical services hence not liable for tax deducted at source.

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) *Under Rule 15 of the Central Excise Rules, 2002, compounded levy scheme is presently applicable to —*

(a) *Pan masala*

- (b) *Gutkha*
- (c) *Chewing tobacco*
- (d) *Aluminium circles.*
- (ii) *Under section 27A of the Customs Act, 1962, interest on refunds is payable, if refund due is not disbursed within —*
 - (a) *3 Months from the date of application*
 - (b) *6 Months from the date of application*
 - (c) *3 Months from the date of order granting refund*
 - (d) *6 Months from date of order granting refund.*
- (iii) *Effective rate of customs duty on general baggage is —*
 - (a) *150%*
 - (b) *100%*
 - (c) *35%*
 - (d) *10%.*
- (iv) *With the sanction of the proper officer and on the payment of prescribed fees, the owner of any goods after warehousing —*
 - (a) *Cannot inspect the goods*
 - (b) *Can show the goods for sale*
 - (c) *Cannot sale, export or dispose off the goods*
 - (d) *Cannot separate damaged or deteriorated goods from the rest.*
- (v) *The books of account or other documents, seized by the Central Excise Officer shall be returned within —*
 - (a) *6 Months of seizure of documents*
 - (b) *90 Days of issue of show cause notice*
 - (c) *30 Days of issue of show cause notice*
 - (d) *60 Days of issue of show cause notice.* (1 mark each)
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
 - (i) *Application to settlement commission can be made only when a case is pending before _____ on the date of application.*
 - (ii) *In the case of goods imported by post, any label or declaration accompanying the goods showing the contents, description, quantity and value shall be treated as _____.*
 - (iii) *Shipping bill for export of goods under claim for duty drawback should be in _____ colour.*
 - (iv) *Section 117 of the Customs Act, 1962 provides general penalty to a person who contravenes any provisions of the Act or abets in contravention and if no penalty has been prescribed, the penalty would be upto _____.*
 - (v) *Under section 35B of the Central Excise Act, 1944, any person aggrieved by any decision or order passed by the Commissioner (Appeals) may appeal*

to CESTAT within _____ from the date of communication of the order contested. (1 mark each)

(c) Discuss in brief whether CENVAT credit will be admissible in following cases:

- (i) Inputs gone in process loss.
- (ii) Cement used for installation of machinery.
- (iii) Accessories cleared alongwith the final product.
- (iv) Paints used in factory to protect plant.
- (v) Tubes and pipes used in the factory. (1 mark each)

(d) When does e-filing of return become mandatory under the Central Excise Rules, 2002 ? (5 marks)

Answer 4(a)(i)

- (d) Aluminum circles.

Answer 4(a)(ii)

- (a) 3 months from the date of application.

Answer 4(a)(iii)

- (c) 35%

Answer 4(a)(iv)

- (b) Can show the goods for sale

Answer 4(a)(v)

- (c) 30 days of issue of show cause notice.

Answer 4(b)

- (i) Application to settlement commission can be made only when a case is pending before **Adjudicating authority** on the date of application.
- (ii) In the case of goods imported by post, any label or declaration accompanying the goods showing the contents, description, quantity and value shall be treated as **an entry** .
- (iii) Shipping bill for export of goods under claim for duty drawback should be in **Green** colour.
- (iv) Section 117 of the Customs Act, 1962 provides general penalty to a person who contravenes any provisions of the Act or abets in contravention and if no penalty has been prescribed, the penalty would be upto **₹ 1,00,000** .
- (v) Under section 35B of the Central Excise Act, 1944, any person aggrieved by any decision or order passed by the Commissioner (Appeals) may appeal to CESTAT within **three months** from the date of communication of the order contested.

Answer 4(c)

- (i) **Yes**, CENVAT is available on entire quantity of input even if part of input goes in process *loss-Multi Metals Ltd. v. ACCE* (1992) 57 ELT 209 (SC).
- (ii) **No**, as per explanation 2 to definition of input, cement used for installation of machinery is not eligible for CENVAT Credit.
- (iii) **Yes**, as per rule 2(k)(i) of the CENVAT Credit Rules, 2004, accessories are eligible for CENVAT credit if these are cleared along with the final product.
- (iv) **Yes**, goods used as paint in or in relation to manufacture of final products or for any other purpose, within the factory of production are eligible for CENVAT Credit [*Ruchi Health Foods v. CCE* (2007) 218 ELT 716 (CESTAT)].
- (v) **Yes**, as per definition of Capital Goods in Rule 2(a) of the CENVAT Credit Rules, tubes and pipes are capital goods if used in the factory.

Answer 4(d)

With effect from 1-04-2010 e-filing of return has been made mandatory. Proviso to Rule 12 of the Central Excise Rules provides that when an assessee has paid duty of rupees ten lakhs or more including the amount of duty paid by utilization of CENVAT Credit in the preceding financial year, he shall mandatorily file the monthly or quarterly return, as the case may be, electronically.

Question 5

- (a) *Priya and Co. manufactured 1,000 units of Product-P, out of which 800 units were cleared to a sister unit for captive consumption and balance 200 units were lying in stock. Compute assessable value for central excise purposes of Product-P from the following particulars :*

- *Cost of production of 1,000 units as per CAS-4 = ₹ 7,90,000.*
- *Profit margin as per annual report of the company = 12% on cost.*
- *Selling price per unit (excluding excise duty and other taxes) = ₹ 900.*

What will be your answer, if balance 200 units were sold to an unrelated buyer @ ₹ 925 per unit on the same day ? Give reasons for your answer. (5 marks)

- (b) *Bholaram imported certain goods in November, 2009 and an 'into bond' bill of entry was presented on 28th November, 2009. Assessable value was US \$1,00,000. Order permitting the deposit of goods in warehouse for 3 months was issued on 2nd December, 2009. Bholaram neither obtained extension of warehousing period nor cleared the goods within the permitted warehousing period of 1st March, 2010. Only after a notice was issued under section 72 of the Customs Act, 1962 demanding duty and other charges, Bholaram removed the goods on 15th April, 2010.*

Compute the amount of duty payable by Bholaram while removing the goods from warehouse, assuming that no additional duty or special additional duty is payable. You are supplied with the following information :

	28.11.2009	01.03.2010	15.04.2010
Rate of exchange per US \$	₹ 46	₹ 45	₹ 44
Rate of basic customs duty	15%	10%	5%

(5 marks)

(c) What is the remedy available to an assessee aggrieved by following decisions/orders in each separate case :

- Adjudication order passed by Additional Commissioner of Central Excise.
- Adjudication order passed by the Commissioner of Central Excise.
- Order passed by the Commissioner (Appeals) relating to rebate of duty of excise on goods exported outside India.
- Order passed by the Tribunal relating to valuation of goods.
- Order passed by the Tribunal relating to penalty. (1 mark each)

Answer 5(a)

In case goods are supplied to a 'related person' for captive consumption, valuation is done on the basis of cost of production plus 10% (proviso to rule 9 of Central Excise Valuation Rules). Rate of profit margin or selling price is not considered.

	₹
Cost per unit as per CAS-4 = $\frac{7,90,000}{1,000}$	790
Add : 10% notional profit as per Rule 8	79
Assessable value per unit	869

Assessable value of 800 units (as per proviso to Rule 9)

$$= ₹ 869 \times 800 \text{ units} = ₹ 6,95,200$$

If the balance 200 units were sold to unrelated buyers @ ₹ 925 per unit then assessable value shall be Rs.1,85,000 (200 x 925) as Priya and Co. directly selling the goods to unrelated party not through the sister unit.

Answer 5(b)

Relevant rate of Exchange (Note 1)	=	₹ 46
Applicable rate of duty (Note 2)	=	10%
Assessable value US\$ 1,00,000 x ₹ 46	=	₹ 46,00,000
Customs Duty @ 10%	=	₹ 4,60,000
Add : EC@2% & SHEC@1% of Customs Duty	=	₹ 13,800
Total customs duty payable	=	₹ 4,73,800

Note 1 : The relevant rate of exchange will be the rate in force on the date on which 'into bond' bill of entry is presented. Subsequent change is not relevant. Hence exchange rate relevant is 1 US \$ = ₹ 46 on 28.11.2009.

Note 2 : In *Kesoram Rayon v. CC* (1996) 86 ELT 464, it was held that goods which are not removed from the warehouse within the permissible period are deemed to be improperly removed on the last date on which goods should have been removed. Hence, the applicable rate of duty is 10%, i.e., on 01.03.2010, the last date when the period was over.

Answer 5(c)

- (i) He may appeal to Commissioner (Appeals)
- (ii) Appeal can be made to Customs, Excise & Service Tax Appellate Tribunal (CESTAT) against the order passed by Commissioner of Central Excise.
- (iii) In this matter appeal shall not lie with CESTAT. Revision application has to be filed with Central Government.
- (iv) Appeal shall lie with Supreme Court
- (v) Appeal can be filed with High Court.

Question 6

- (a) *The assessee, a manufacturer of small juicer, used to avail of the benefit of SSI-exemption. The said goods were sold under their own brand named 'Fatafat'. However, in case of sale to Smart Tele Shopping (STS), who were further selling the product through tele-shopping network, the supervisors of STS used to examine the goods and affix a sticker thereon containing the name of STS.*

The department denied SSI-exemption in respect of goods bearing the name/symbol of STS contending that the same amounts to affixation of brand name so as to dis-entitle the exemption. Discuss in the light of decided case law, if any, whether contention of the department is tenable in law. (5 marks)

- (b) *Is the port trust liable to pay duty on goods pilfered while in their possession ? Explain in brief under the Customs Act, 1962. (5 marks)*

- (c) *What is ad hoc exemption under the Customs Act, 1962 ? Can it be granted even after duty is paid ? (3 marks)*

- (d) *What is ACES ? Discuss briefly. (2 marks)*

Answer 6(a)

If a manufacturer clears goods under his own brand name, SSI-exemption is available. But if the manufacturer clears goods bearing the brand name of any other person, SSI-exemption is not available.

The facts of the given case are similar to the case of *Unison Electronics Pvt. Ltd.* [2009] 235 ELT 206 (SC), wherein it was held that, the sticker containing name/symbol of the buyer were fixed after quality checking, therefore, the same was a brand name used for the purpose of indicating a connection in the course of trade between the goods and the buyer. Accordingly, the assessee was not entitled to SSI-exemption in respect of goods sold to this particular buyer. So the assessee is not entitled to avail the benefit of SSI-exemption in respect of goods sold to STS.

Answer 6(b)

Section 45(3) of the Customs Act, 1962 casts liability on the custodians to pay customs duty in case of any pilferage taking place while the goods are under their custody. However, Section 45(3) applies to 'person referred to in section 45(1)'. Section 45(1) provides for approval of custodians by the Commissioner of customs. Accordingly, the major Ports notified under the Major Port Trusts Act, 1963 who are authorized to function as custodian under their respective Acts, do not require any approval before acting as custodians. Therefore, provisions of Section 45(1) do not apply to them.

In *Board of Trustees v. Union of India* (2009) 241 ELT 513 (Bom.), it was held that under Section 45(1) of the Customs Act, the recovery of duty in respect of pilfered goods could only be made from the approved person and the port trust is not liable to pay duty on goods pilfered while in their possession.

The Court interpreted that the intention of the law might have been to check the pilferage taken place from a private warehouse or a customs warehouse run by a private party. The negligence of such private parties should not cause loss to the exchequer.

Answer 6(c)

Section 25(2) of the Customs Act permits the Central Government to issue *ad hoc* exemption from customs duty by issue of a special order in public interest and under exceptional circumstances. The order should specify the exceptional circumstances for granting *ad hoc* exemption.

It has been clarified that such exemption can be granted even after duty is paid. In such case, duty has to be refunded-MF (DR) Circular no.12/97-Cus dated 12.05.1997.

Answer 6(d)

ACES stands for Automation of Central Excise and Service Tax. It is a centralized, web based software application which automates various processes of Central Excise & Service Tax assesses and Department and gives complete end to end solution. Any assessee can register with department using ACES application, can file tax return, claims and intimations, track its status and get online message.

Question 7

- (a) What are the conditions governing refund of import duty under section 26A of the Customs Act, 1962 ? Explain briefly. (5 marks)
- (b) Distinguish between the following :
 - (i) Export under bond by 'merchant exporter' and 'manufacturer exporter' under Rule 19 of the Central Excise Rules, 2002.
 - (ii) 'Brand rate' and 'special brand rate' for duty drawback. (4 marks each)
- (c) Can an application for advance ruling be made by the following :
 - (i) Government department.
 - (ii) A resident importing goods under project import scheme. (1 mark each)

Answer 7(a)

Section 26A of Customs Act, as inserted by the Finance (No.2) Act, 2009 w.e.f. 19.8.2009 makes provision for refund of import duty paid if goods are found defective or not as per specifications. Other conditions are as under:

- (i) The imported goods are found to be defective or not in conformity with the specifications and they should not have been reworked or repaired or used after import.
- (ii) The goods should be identified to the satisfaction of the AC/DC of Customs as the goods which were imported.
- (iii) The importer had not claimed drawback under any other provision of this Act.
- (iv) Goods should either be re-exported or abandoned or destroyed in the presence of the proper officer within 30 days from the date on which goods were imported (the period can be extended upto three months).
- (v) Application for refund should be made within six months from the relevant date in prescribed form and manner.

Answer 7(b)(i)**Export under bond by merchant exporter and manufacturer exporter**

Procedures for export under bond under Rule 19 of the Central Excise Rules, 2002 are prescribed in Notification No.42/2001-CE(NT) dated 26.6.2001.

Merchant exporter is required to execute a bond in Form B-1. Merchant Exporter registered with recognized Export Promotion Council and Star Export Houses do not have to furnish any security/surety while executing bond, unless they have come to adverse notice of department. After execution of bond, merchant exporter has to obtain CT-1 certificates from excise office.

He will send CT-1 certificate to the manufacturer from whom goods are to be procured for export without payment of duty. The merchant exporter will maintain a 'Running Bond Account' for export.

The manufacturer exporter needs not to execute a bond. He can furnish a Letter of Undertaking (LUT) in Form UT-1. The LUT once given is valid for 12 calendar months. The LUT will not be discharged unless proof of export is submitted or duty is paid upon deficiency with interest.

Answer 7(b)(ii)**'Brand rate' and 'special brand rate' for duty drawback**

All industry drawback rates are fixed by the Directorate of Drawback. It is possible to fix all industry rates only for some standard products. It cannot be fixed for special type of products. In such cases, brand rate is fixed under rule 6. The manufacturer has to submit an application with all details to the Commissioner, Central Excise. Such application must be made within 60 days of export.

All industry rates are fixed on average basis. In case the manufacturer or exporter finds that the (a) duty-drawback as per all industry rate is less than 80% of the duties

paid by him (b) rate is not less than 1% of FOB value of product except when amount of drawback per shipment is more than Rs.500 (c) export value is not less than the value of imported material used in them. In such cases, he can apply for fixation of special brand rate to the Commissioner of Central Excise and Customs. He can apply under Rule 7 for fixation of Special Brand Rate, within 30 days from export.

Answer 7(c)(i)

No, Government Department cannot apply for advance ruling, as it is not included in the definition of Public Sector Company.

Answer 7(c)(ii)

Yes, resident importing goods under project import scheme under heading 9801 can apply for advance ruling –Notification No.124/2009-Cus (NT) dated 20.8.2009.

PART C

Question 8

Attempt any five of the following :

- (i) *What is 'tax heaven' ? What are the parameters to consider whether a jurisdiction is tax heaven or not, as outlined by the Organisation for Economic Co-operation and Development (OECD) ?* (4 marks)
- (ii) *Mahesh, aged 64 years, is resident and ordinarily resident in India. His income is ₹ 16,80,000 from a business in India and ₹5,45,000 from a business in a foreign country with whom India has agreement for avoidance of double taxation (ADT). According to the ADT agreement, income is taxable in the country in which it is earned and not in other country. However, in the other country, such income can be included for computation of tax rate.*

According to the tax laws of the foreign country, Mahesh has paid ₹ 32,000 as tax in that country. During the previous year, Mahesh has paid ₹ 28,000 as tuition fee for his daughter in India and ₹ 90,000 as tuition fee for his son outside India for full time education. Mahesh has also received an interest of ₹ 48,000 on Government securities. Find out the tax liability of Mahesh for the assessment year 2011-12. Does it make any difference, if Mahesh is a non-resident ? (4 marks)
- (iii) *What are the entry options available for foreign companies planning to set-up business operations in India ? Explain briefly.* (4 marks)
- (iv) *Explain the binding nature of advance rulings under the Income-tax Act, 1961.* (4 marks)
- (v) *What is the role of 'Transfer Pricing Officer' ? Is it possible for the Assessing Officer to pass the assessment order pertaining to the assessment year 2011-12 without considering arm's length price determined by the Transfer Pricing Officer ?* (4 marks)
- (vi) *Distinguish between 'Cross Border Transactions' and 'International Transactions'.* (4 marks)

Answer 8(i)

A tax heaven is a place where there is no tax on income or it is taxed at low rates of tax structure. Some critics call it as a method of tax avoidance but doing business through tax heaven countries may not always be profitable.

The OECD has outlined the following parameters to consider whether a jurisdiction is tax heaven or not as under:

- (i) Imposes no or only nominal taxes:
- (ii) Whether there is a lack of transparency: Transparency ensures that there is an open and consistent application of tax laws among similarly situated taxpayers and that information needed by tax authorities to determine a taxpayer's correct tax liability is available
- (iii) Whether there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers benefiting from the no or nominal taxation.
- (iv) Where there is absence of a requirement that the activity is substantial : the lack of such activities suggests that a jurisdiction may be attempting to attract investment and transactions that are purely tax driven.

Answer 8(ii)

**Computation of Tax Liability of Mahesh
For the Assessment Year 2011-12**

	₹
Business income in India	16,80,000
Interest on Government Securities	48,000
Gross Total Income	17,28,000
Less : Deduction under Section 80C (see note)	28,000
Total Income	17,00,000
Add : Foreign income to be included for rate purpose	5,45,000
Total	22,45,000
Tax on ₹ 22,45,000	₹
Upto ₹ 1,60,000	Nil
From ₹ 1,60,001 to ₹ 5,00,000 @ 10%	34,000
From ₹ 5,00,001 to ₹ 8,00,000 @ 20%	60,000
On balance ₹ 14,45,000 @ 30%	4,33,500
Add : Education Cess (2% of tax)	10,550
Add : Secondary and higher education cess (1% of tax)	5,275
Tax payable	5,43,325

Average rate of tax $\frac{5,43,325}{22,45,000} \times 100 = 24.20\%$

Indian tax liability (₹ 17,00,000 x 24.20%) **4,11,400**

It will not make any difference if Mahesh is a non-resident. The Non Resident can certainly take the benefit of the provisions of DTAA entered into between India and the country, in which he resides.

Note : Deduction under Section 80C is not available for tuition fee paid outside India.

Answer 8(iii)

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

- (i) As an incorporated entity by getting incorporated under the Companies Act, 1956 or through Joint Ventures, as wholly owned subsidiaries;
- (ii) 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 investment made and the investment under approval route requires prior approval of FIPB (Foreign Investment Promotion Board).

Answer 8(iv)

According to Section 245S of the Income Tax Act, 1961, the advance ruling pronounced by the authority under Section 245R shall be binding only:

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

The advance ruling referred to above shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced. The effect of the ruling is, understandably, stated to be confined to the applicant who has sought it as well as the Commissioner and the Income-Tax Authority subordinate to him having jurisdiction over the case and that too only in relation to transaction for which advance ruling was sought. It may, however, be stated that the Authority generally follows the ruling in other cases on materially similar facts and, most certainly in other cases raising the same question of law, if any, which it has decided. The rule here is different from the position in other countries where either the taxpayer or the revenue or both are at liberty to accept the ruling or not.

Answer 8(v)

Role of “Transfer Pricing Officer”

If Assessing Officer considers it necessary or expedient to refer the Computation of Arm's Length Price of an International Transaction to the Transfer Pricing Officer then he may do so with the previous approval of the Commissioner.

On the date specified in the above notice or as soon as thereafter as may be :

- (a) after hearing such evidence as the assessee may produce, including any information or documents and after considering such evidence as the transfer pricing officer may require on any specified points and
- (b) after taking into account all relevant material which he has gathered.

The transfer pricing officer shall by order in writing determine the arm's length price in relation to the international transaction and send a copy of his order to the AO and to the assessee.

No, it is not possible for the Assessing Officer to pass the assessment order pertaining the assessment year 2011-12 without considering arm's length price determined by the Transfer Pricing Officer. As per section 92CA(4), it will mandatory for the Assessing Officer to compute the total income on the basis of arm's length price determined by the TPO.

Answer 8(vi)

'Cross border transaction' is a transaction in an international or foreign country, or a transaction in a domestic country in which at least one of the counterparties is located outside the home country of the domestic country. All international transactions are cross border transaction. Examples of Cross border transaction are Joint venture agreements, Share purchase and sale agreements, Patent and trademark license agreements, Sales representation agreements, Distributorship agreements, Expatriate employment agreements, Host government agreements

'International transaction' is a transaction must be between two associated enterprises and at least one of such enterprise must be a non-resident. The transaction must be in the nature of purchase, sale or lease of tangible or intangible property, provision of services, lending or borrowing money or any such transaction having a bearing on the profits, income, losses or assets of such enterprises.

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.
