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%)		0.15
	Total	**15.45**%

(ii) If book Profit exceeds Rs.1 crore

IT		15.00
SC (10%)		1.50
EC (2%)		0.33
SHEC (1%)		0.165
	Total	**16.995%**

Foreign company

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

IT	15
SC	Nil
EC (2%)	0.3
SHEC (1%)	0.15

	Total	**15.45** %

(ii) If book Profit exceeds Rs.1 crore

IT	15.00	
SC (2.5%)	0.375	
EC (2%)	0.3075	
SHEC (1%)	0.15375	
Total	**15.83625** %	

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 Section2(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 Uttaranchal 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;

(vi)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 transportupto 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) Les 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	100	
FOB	20,500	
Add: Freight charges of the ship for transport upto the Indian Port	1,200	
Add: Insurance @ 1.125% of FOB	231	
CIF		21,931
Add: Landing charges @ 1% of CIF	219	
Assessable Value	22,150	

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 (EASIEST). 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 transhipment, a bill of transhipment 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 assesee 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 asessee 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%.