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SUBJECT- ECONOMIC LAWS

Test Code - FNJ 7294

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Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

CASE STUDY - 1

MCQ.S

(2 marks each , Total of 20 Marks)

1. A
2. D
3. B
4. A
5. C
6. B
7. D
8. A
9. A
10. B

Descriptive Answer

Answer 1.(A) Mr. Gupta and Deep started a new real estate project in Pune and for that project they applied for RERA registration. As a Real Estate Regulatory Authority While checking any application for registration provisions of Section 4 of the Real Estate Regulatory Act (RERA) must be kept in mind. The different provisions of the Section 4 are as under—

- (1) This section provides that every promoter shall make an application to the Authority for registration of the project in such form, manner, within such time and accompanied by such fee as may be prescribed.
- (2) The promoter shall enclose the following documents along with the application referred to in sub-section(1), namely—
 - (a) a brief details of his enterprise including its name, registered address ,type of enterprise(proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of promoter:
 - (b) a brief detail of the project launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
 - (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases.
 - (d) The sanctioned plan, layout plan and specification of the proposed project of the phase thereof, and the whole project as sanctioned by the competent authority.
 - (e) The plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy.
 - (f) The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
 - (g) Proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

- (h) The number , type and the carpet area of apartment for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the appurtenant , if any;
- (i) The number and area of garage for sale in the project;
- (j) The names and address of his real estate agents, if any, for the proposed project;
- (k) The names and address of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (l) A declaration, supported by an affidavit, which shall be signed by the promoter or any person authorized by the promoter, stating :--

- (A) that he has a legal title to the land on which development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

- (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

- (C) the time period within which he undertakes to complete the project of phase thereof, as the case may be;

- (D) that 70% of the amount realized for the real estate project from the allottees , from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for the purpose;

The promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. The amounts from the separate account shall be withdrawn by the promoter after it is certified by an architect, an engineer, and a chartered accountant in practice that the withdrawal is in proportion to the percentage of the project.

The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amount collected for a particular project have been utilized for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

- (E) that he shall take all the pending approvals on time, from the competent authorities;

- (F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

- (m) such other information and documents as may be prescribed.

- (3) The Authority shall operationalize a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

If all the above conditions are satisfied then the registration can be granted.

Answer 1.(B) (1) Promoters of any real estate project applies for registration because the provisions of Section 3 of RERA require a prior registration with the concerned Real Estate Regulatory Authority. Section 3 of RERA provides that no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, in any real estate project or part of it in planning area without registering the real estate project with the Real Estate Regulatory Authority established under this Act.

However, the promoter shall make an application to the Authority for registration of the project that is ongoing on the date of commencement of this Act and for which completion certificate has not been issued; within a period of three months from the date of commencement of this Act.

(2) As per the provisions of Section 3(2) in the following situation no registration of the real estate project is required –

- (a) Where the area of the land proposed to be developed does not exceed 500 square meters or the number of apartments proposed to be developed does not exceed eight (8) inclusive of all phases;
- (b) Where the promoter has received completion certificate for a real estate project prior to the commencement of this Act,
- (c) For the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

(10 MARKS)

Answer 2.(A) A raid was conducted at Mr. Gupta's residence by Income Tax Authorities. During the raid cash, jewellery, property papers and a diary was found. Based upon these and the details as mentioned in the diary about cash deposition in the bank during the period of demonetization, Mr. Gupta can be booked under Prohibition of Benami Property Transaction Act, 1988(The Act) .

Details of his diary revealed that during the period of demonetization Mr. Gupta deposited a sum of Rs. 40 lacs in the different accounts of his servants, their spouse, their children and his office staff. However he could not offer any satisfactory reply for such deposition and the source of the said amount. Apart from this, cash amounting to Rs. 27, 50,000 /- was also found, with jewellery worth Rs. 3 crores. For these also Mr. Gupta did not had any reply. As no legitimate source of cash and jewellery could be established by Mr. Gupta so whole transaction involved in procuring such cash and jewellery can be termed as benami transaction and property so acquired by such transaction will be treated as benami property as per the provisions of Section 2(8) and 2(26) which defines benami property and property respectively.

Mr. Gupta had purchased three plots and three flats for his three children, but registered value of all these properties was less than their fair market value so the difference of their fair market value and registered value (i.e. 25 lacs each in case of plots and 40 lacs each in the case of flats) can be treated as benami property.

Apart from these he had purchased two plots in the name of his female servant. The definitions of benamidar and beneficial owner as defined in the Act, makes it clear that in this transaction the servant becomes benamidar and Mr. Gupta becomes the beneficial owner of such property. So again transaction of such two plots Rs. 60 lacs is also termed as

benami transaction and the property becomes benami property as defined in the Act.

Under the Act Section 3 clearly mentions prohibition on benami transaction. As per Section 3—

- (1) No person shall enter into any benami transaction.
- (2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or both.
- (3) Whoever enters into any benami transaction on and after the commencement of the Benami Transaction (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in chapter VII.

Section 53 of chapter VII provides for penalty for benami transaction. As per the provisions of this Section---

Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

Whoever is found guilty of the offence of benami transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty five percent of the fair market value of the property.

So it is clear that as per the provisions of Section 53 Mr. Gupta can be punished with a rigorous imprisonment for a term not less than one year, extending up to seven years. With this he shall also be liable to fine upto 25% of the fair market value of the property termed as benami property. In the given case his fine may extend as under—

Name	Value of property	Fair market value of property	fine (in Rs.)
Cash	40.00 lacs	40.00 lacs	10.00 lacs
Cash	27.50 lacs	27.50 lacs	6.87 lacs
Plots	90.00 lacs	165.00 lacs	41.25 lacs
Flats	240.00 lacs	360.00 lacs	90.00 lacs
Plots	60.00 lacs	60.00 lacs	15.00 lacs
Jewellery	300.00 lacs	300.00 lacs	75.00 lacs
Total			238.12 lacs

In the given case Mr. Gupta can be fined up to Rs. 238.12 lacs.

Answer 2.(B) As an Authority acting under the provisions of the Prohibition of Benami Property Transaction Act, 1988, the Act has provided with power to impound documents as per the provisions of Section 22 of the Act. This Section provides for as under---

Where any books of accounts or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of the books of accounts or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of accounts or other documents for a period not exceeding three months (3 months) from the date of order of attachment made by the adjudicating Authority.

Provided that the period for retention of the books of accounts or other documents may be extended beyond a period of three months from the date of order of attachment made by the Adjudicating Authority where the authority records in writing the reasons for

extending the same.

Where the Authority impounding and retaining the books of accounts or other documents, under the aforesaid is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen (15) days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

The period of retention of the books of accounts or other documents shall in no case exceed period of thirty (30) days from the date of conclusion of all the proceedings under this Act. The person, from whom the books of accounts or other documents were impounded, shall be entitled to obtain copies thereof. On the expiry of the period specified, the books of accounts or other documents shall be returned to the person from whom such books of accounts or other documents shall be returned to the person from whom such books of accounts or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person.

(10 MARKS)

Answer 3

In India, if any person wants to enter into foreign currency transaction he can do so, but these transactions should be within limits as prescribed by Reserve Bank of India. These transactions can not be carried out on one's own but can be through a proper channel only. This proper channel is known as Authorised Person. It means that in India if any person wants to buy or sell foreign currency in any form he or she can do so through Authorised person only. These Authorized person get authorization to deal in foreign currency from The Reserve Bank Of India after making application to the Bank to do so. The provisions regarding Authorisation and their working of any such person are mentioned in Section 10 of the Foreign Exchange management Act, 1999. The different provisions of this Section are as under—

- (1) The Reserve Bank may, on an application made to it in this behalf, authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, moneychanger or off- shore banking unit or in any other manner as it deems fit.
- (2) An authorization under this section shall be in writing and shall be subject to the conditions laid down therein.
- (3) An authorization granted under sub-section (1) above maybe revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that:
 - (a) it is in public interest to do ; or
 - (b) the authorized person has failed to comply with the condition subject to which the authorization was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction order made there under ;

Provided that no such authorization shall be revoked on any ground referred to in clause (b) unless the authorized person has been given a reasonable opportunity of making a representation in the matter.

- (4) An authorized person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorized person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorization under this section.

- (5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made there under, and where the said person refuses to comply with any such requirement or make only unsatisfactory compliance therewith, the authorized person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.
- (6) Any person other than an authorized person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorized person under sub- section (5) does not use it for such purpose or does not surrender it to authorized person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or directions or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

This channel who deals in foreign currency on behalf of others does its duty as per the directions given by the Reserve Bank. Powers of Reserve Bank in this regard are mentioned in Section 11 of the Act. These are as under—

- (1) The reserve Bank, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made there under, may give to the authorized person any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign currency.
- (2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification direction or order made there under, direct any authorized person to furnish such information, in such manner, as it deems fit.
- (3) Where any authorized person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorized person a penalty which may extend to ten thousand (10,000) rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand (2,000) rupees for every day during which such contravention continues.

(10 MARKS)

CASE STUDY - 2

MCQ.S

(2 marks each , Total of 20 Marks)

1. C
2. C
3. C
4. C
5. A
6. D
7. B
8. B

9. B

10.c

ANSWERS TO DESCRIPTIVE QUESTIONS

1. (i) Section 11(3) of the Foreign Exchange Management Act, 1999 states that where any Authorised person contravenes any direction given by the Reserve Bank of India under the said Act or fails to file any return as directed by the Reserve Bank of India, the Reserve Bank of India may, after giving reasonable opportunity of being heard, impose on Authorised Person, a penalty which may extend to ten thousand rupees and in the case of continuing contraventions with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

Since as per the facts given in the question, the Authorised person, namely, Forex Dealers Ltd., has failed to file the returns as directed by the Reserve Bank of India. According to the above provisions, it has exposed itself to a penalty which may extend to ten thousand rupees and in the case of continuing contraventions in the nature of failure to file the returns, with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

- (ii) According to the provisions of section 2(v) of the Foreign Exchange Management Act, 1999, a person in order to qualify for the purpose of being treated as a "Person Resident in India" in any financial year, must reside in India for a period of more than 182 days during the preceding financial year. In the given case, Mr. Shekhar has resided in India for a period of only 150 days, i.e., less than 182 days, during the financial year 2016-2017. Hence, he cannot be considered as a "Person Resident in India" during the financial year 2017-2018 irrespective of the purpose or duration of his stay.

- (iii) Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (vii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (v ii). Accordingly printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by Printex unit in Pune which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.

(10 MARKS)

2. **Capital Account Transactions:** All the transactions referred to in the question are capital account transactions.

Section 6(2) of FEMA, 1999 provides that the Reserve Bank may in consultation with the Central Government specify the permissible capital account transactions and the limit upto which foreign exchange will be allowed for such transactions.

- (i) **Depreciation of direct investments:** According to proviso to section 6(2), the Reserve bank shall not impose any restriction on the drawal of foreign exchange for certain transactions. One such transaction is drawal of foreign exchange for payment due for depreciation of direct investment in the ordinary course of business. Hence this transaction is permissible without any restrictions.
- (ii) **Person resident in USA returning permanently to India:** When the person returns to India permanently, he becomes a resident in India. Section 6(4) provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security, etc. if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. In view of this, the person who returned to India permanently can continue to hold the foreign security acquired by him when he was resident in U.S.A.
- (iii) **Investment in shares of Indian company by non-resident:** Reserve Bank issued Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. Regulation 4(6) of the said Regulations prohibits a person resident outside India from making investment in India, in any form, in any Company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in construction of farm houses. Hence it is not possible for a person resident outside India to invest in the shares of a company engaged in construction of farm houses as such investment is prohibited.
- (iv) **Acquisition of immovable property by person resident outside India:** Reserve Bank issued Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The regulations specify the classes of capital account transactions of persons resident outside India in Schedule II. Under this schedule, acquisition and transfer of immovable property in India by a person resident outside India is permissible. Hence, the person resident of Canada can acquire the immovable property in Mumbai.

(10 MARKS)

3. (i) Adherence to sanctioned plans and project specifications by the promoter (Section 14)

The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

- (1) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person.

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after

proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

- (2) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act

Hence, in the instant case, reducing the number of rooms does not come under minor additions or alterations. The promoter i.e. Mr. Pankaj Gupta shall not make any additions and alterations in the sanctioned plans, layout plans and specifications within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such buildings.

(ii) No deposit or advance to be taken by promoter without first entering into agreement for sale

According to section 13 of the said Act, a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

In the instant case, the cost of the flat is Rs. 2 crore and Mr. Shyam put a condition to pay Rs. 50 Lakhs as an application fee before entering into a written agreement for sale with Mr. Vivaan. This is invalid as a promoter can accept only Rs.20 Lakhs (10% of Rs. 2 Crore) as an advance or an application fee without first entering into a written agreement for sale.

(10 MARKS)

CASE STUDY - 3

MCQ'S (2 marks each , Total of 20 Marks)

1. C
2. B
3. B
4. A
5. D
6. A
7. C
8. D
9. D
10. B

Descriptive Answers

Ans.1(a) The property so purchased in the name of Mrs. Rama Devi, whether a 'Benami Property' or not, will depend upon the facts/motive/intention of Mr. Mukesh Kumar for purchasing property in such a way.

The property **would be considered** as benami property-

- If the intention to purchase property was only to save stamp duty; and
- It was intended not to give any ownership benefit to his wife.

Additionally, it is also to be proved in case of benami property that the owner of the property was not aware of, or, denied knowledge of such ownership.

The property **would not be considered** as benami property-

- If the intention was to give ownership rights to Mrs. Rama Devi i.e. gifting of property to her; and
- his wife was fully aware of purchase of property in her name by her husband.

In this case, as per the facts, the payment of lesser stamp duty is consequential to purchase of property in the name of a woman. Hence, the property purchased on the name of Mrs. Rama Devi is not a Benami Property.

Answer 1(b) Yes. It is certainly a case of benami property. The reasons are:

- (i) The consideration for the property had not been given by Rampal though title deeds of the property were registered in his name.
- (ii) Rampal was not aware that the property was purchased in his name.
- (iii) Rampal was not the real owner of the property since he did not make payment.
- (iv) The intention of Mr. Mukesh Kumar was to utilize his undisclosed funds without involving himself as owner of such funds and to enjoy benefits (i.e. rent) emanating from such property.

(10 MARKS)

Answer 2

S. No.	Property Transactionat	Beneficial Owner	Benamidar
1.	South Extension	Mukesh Kumar	N. A.
2.	New Friends Colony	Mukesh Kumar	N. A.
3.	Greater NOIDA	(i) Mukesh Kumar, if his intention was not to give ownership rights to his wife. (ii) Rama Devi, if his intention was to give ownership rights to his wife.	(i) Rama Devi (ii) N. A.
4.	Dwarka	All his three sons	Benami property to extent of Rs. 30 lacs - Fictitious person from whom the cheque was obtained is Benamidar.
5.	Jaipur	Mukesh Kumar	Rampal

(10 MARKS)**Answer 3**

As per section 53 of the Prohibition on Benami Property Transactions Act, 1988, where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

Whoever is found guilty of the offence of benami transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty- five per cent of the fair market value of the property.

Accordingly, following are the answers:

- Mr. Raj, beneficial owner, his wife being benamidar and the legal counsel who abets/induces Mr. Raj, to enter into a benami transaction, all the three will be liable under section 53 .
- All, in the given case entered into a benami transaction with a motive to avoid payment of statutory dues, are liable for rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.
- As per section 55, no prosecution shall be instituted against any person in respect of any offence committed under sections 53 without the previous sanction of the Board(CBDT).

(10 MARKS)