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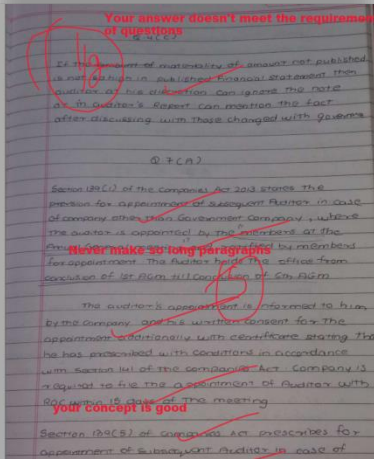
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**Rahul Singla** "It was hard for me to think of what to do since it was my 3<sup>rd</sup> attempt of Inter but thanks to catestseries.org and their team who helped me through this test series. Now I am positive for my results"

**Sima Bansal** "I want to give a big thanks to catestseries.org. I had cleared my Ipsc 19 attempted. I have suggested all my friends about your test series and they are happy with their results."

**Vivek Pande** "My brother was old student of your website and he was the one who suggested me to join it. I had enough preparation But I was shocked when I saw where I had weak spots. Now I got passed with 37<sup>th</sup> rank is really makes me happy."

## BASIC CONCEPTS

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**Q 1-** Mr. Bhargava, a leading advocate on corporate law, decided to reduce his practice and to accept briefs only for paying his taxes and making charities with the fees received on such briefs. In a particular case, he agreed to appear to defend one company in the Supreme Court on the condition that he would be provided with Rs. 5 lacs for a public charitable trust that he would create. He defended the company and was paid the sum by the company. He created a trust of that sum by executing a trust deed. Decide whether the amount received by Mr. Bhargava is assessable in his hands as income from profession.

**A-** In the instant case, the trust was created by Mr. Bhargava himself out of his professional income. The client did not create the trust. The client did not impose any obligation in the nature of a trust binding on Mr. Bhargava. Thus, there is no diversion of the money to the trust before it became professional income in the hands of Mr. Bhargava. This case is one of application of professional income and not of diversion of income by overriding title. Therefore, the amount received by Mr. Bhargava is chargeable to tax under the head "Profits and gains of business or profession".

**Q 2-** MKG Agency is a partnership firm consisting of father and three major sons. The partnership deed provided that after the death of father, the business shall be continued by the sons, subject to the condition that the firm shall pay 20% of the profits to the mother. Father died in March, 2019. In the previous year 2019-20, the reconstituted firm paid Rs. 1 lakh (equivalent to 20% of the profits) to the mother and claimed the amount as deduction from its income. Examine the correctness of the claim of the firm.

**A-** The issue raised in the problem is based on the concept of diversion of income by overriding title, which is well recognized in the income-tax law. In the instant case, the amount of Rs. 1 lakh, being 20% of profits of the firm, paid to the mother gets diverted at source by the charge created in her favour as per the terms of the partnership deed. Such income does not reach the

assessee-firm. Rather, such income stands diverted to the other person as such other person has a better title on such income than the title of the assessee. The firm might have received the said amount but it so received for and on behalf of the mother, who possesses the overriding title. Therefore, the amount paid to the mother should be excluded from the income of the firm. This view has been confirmed in *CIT vs. Nariman B. Bharucha & Sons (1981) 130 ITR 863 (Bom)*.

**Q 3-** Anand was the Karta of HUF. He died leaving behind his major son Prem, his widow, his grandmother and brother's wife. Can the HUF retain its status as such or the surviving persons would become co-owners?

**A-** In the case of *Gowli Buddanna v. CIT (1966) 60 ITR 293*, the Supreme Court has made it clear that there need not be more than one male member to form a HUF as a taxable entity under the Income-tax Act, 1961. The expression "Hindu Undivided Family" in the Act is used in the sense in which it is understood under the personal law of the Hindus.

Under the Hindu system of law, a joint family may consist of a single male member and the widows of the deceased male members and the Income-tax Act, 1961 does not mandate that it should consist of at least two male members. Therefore, property of a joint Hindu family does not cease to belong to the family merely because the family is represented by a single coparcener who possesses the right which an owner of property may possess.

Therefore, the HUF would retain its status as such.

**Q 4-** Mr. C borrowed on Hundi, a sum of Rs. 25,000 by way of bearer cheque on 11-09-2019 and repaid the same with interest amounting to Rs. 30,000 by account payee cheque on 12-10-2019. The Assessing Officer (AO) wants to treat the amount borrowed as income during the previous year. Is the action of AO valid?

**A-** Section 69D provides that where any amount is borrowed on a hundi or any amount due thereon is repaid otherwise than by way of an account-payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount for the previous year in which the amount was so borrowed or repaid, as the case may be.

In this case, Mr. C has borrowed Rs. 25,000 on Hundi by way of bearer cheque. Therefore, it shall be deemed to be income of Mr. C for the previous year 2019-20. Since the repayment of the same along with interest was made by way of account payee cheque, the same would not be hit by the provisions of section 69D. Therefore, the action of the Assessing Officer treating the amount borrowed as income during the previous year is valid in law.

**Q 5-** The Assessing Officer found, during the course of assessment of a firm, that it had paid rent in respect of its business premises amounting to Rs. 60,000, which was not debited in the books of account for the year ending 31.3.2020. The firm did not explain the source for payment of rent. The Assessing Officer proposes to make an addition of Rs. 60,000 in the hands of the firm for the assessment year 2020-21. The firm claims that even if the addition is made, the sum of Rs. 60,000 should be allowed as deduction while computing its business income since it has been expended for purposes of its business. Examine the claim of the firm.

**A-** The claim of the firm for deduction of the sum of Rs. 60,000 in computing its business income is not tenable. The action of the Assessing Officer in making the addition of Rs. 60,000, being the payment of rent not debited in the books of account (for which the firm failed to explain the source of payment) is correct in law since the same is an unexplained expenditure under section 69C. The proviso to section 69C states that such unexplained expenditure, which is deemed to be the income of the assessee, shall not be allowed as a deduction under any head of income. Therefore, the claim of the firm is not tenable.