

Solution

The Supreme Court in case of **CIT vs. Sunil J. Kinariwala 259 ITR 10** held that **there is a clear distinction between a case where a partner of a firm assigns his share in favour of a third person and a case where a partner constitutes a sub-partnership with his share in the main partnership.**

In the former case, the assignee gets no right or interest in the main partnership, except of course, to receive that part of the profits of the firm referable to the assignment and to the assets in the event of dissolution of the firm.

In the latter case the sub-partnership acquires a special interest in the main partnership.

Though, the trust, as an assignee, became entitled to receive the assigned share of the profits from the firm, it received the share of profits not as a sub-partner having rights in the partnership, because no sub-partnership came into existence, but as an assignee of the share of income of the assignor-partner. Therefore, there was no diversion of income by overriding title; it was a case of application of income. The share of the income of the assessee assigned to the trust had to be included in the income of the assessee.

Readers Note:**Practical 1**

Specify with reason, whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion.

- (i) Assessee paid 1,00,000 insurance premium on his life to reduce his total income from Rs. 3,50,000 to Rs. 2,50,000.
- (ii) SQL Ltd. submits return of tax deduction at source effected by it in time.
- (iii) A partnership firm obtaining declaration from lenders/depositors in Form No. 15G/15H and forwarding the same to income-tax authorities.
- (iv) A company installed an air-conditioner costing Rs. 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.
- (v) RR Ltd. issued a credit note for Rs. 80,000 as brokerage payable to Mr. Ramana who is the son of the managing director of the company. The purpose is to increase the total income of Mr. Ramana from Rs. 4,00,000 to Rs. 4,80,000 and reduce the income of RR Ltd. correspondingly.
- (vi) A company remitted outstanding GST on 31-03-2018 before due date of filing income tax return.

Solution

Sr. No.	Answer	Reasons
(i)	Tax Planning	Making payment for LIC premium and claiming deduction under section 80C is as per the provisions of law.
(ii)	Tax Management	Filing return of TDS helps in complying with the obligations under the Income-tax Act, 1961 and further helps in deductee to claim TDS
(iii)	Tax Management	Obtaining declaration from lenders/depositors in Form No. 15G/15H by a partnership firm and forwarding the same to Income-tax authorities is in the nature of compliance of statutory obligation under the Income-tax Act, 1961.

(iv)	Tax evasion	An air conditioner fitted at the residence of a director as per the terms of his appointment would be a furniture qualifying for depreciation@10%, whereas an air conditioner fitted in a factory would be a plant qualifying for a higher depreciation@15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit and consequent tax liability. Treatment of air-conditioner fitted at the residence of a director as a plant fitted at the factory would tantamount to furnishing of false particulars with an attempt to evade tax.
(v)	Tax evasion	Issuance of a credit note for Rs. 80,000 by RR Ltd. as brokerage payable to Mr. Ramana, the son of the Managing Director, to increase his total income from Rs. 4 lakh to Rs. 4.80 lakh and to correspondingly reduce the company's total income is a method of reducing the tax liability of the company by recording a fictitious transaction. The company is liable to tax at a flat rate of 30% whereas Mr. Ramana is liable to pay tax @ 5% above the basic exemption limit of Rs. 2,50,000, since his total income does not exceed Rs. 5,00,000. Further, Mr. Ramana would also eligible for rebate of Rs. 2,500 under section 87A if total income does not exceed Rs. 3,50,000. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.
(vi)	Tax Management	Remitting of GST before due date of filing income tax return is proper compliance to avail deduction in view of the provisions of section 43B of the Income Tax Act.

Readers Note:
