

CLARIFICATIONS

1. What is the termination clause of the said agreement?

Not relevant. You can assume a standard termination clause which doesn't impinge upon the question of law at hand.

2. Whether the payment is made as a part and parcel of share purchase agreement or to reimburse the share purchase agreement?

Not clear what you mean by reimbursement of share purchase agreement. There is one agreement in which you can assume there is a separate section/clause which deals with the non-compete and specifies the amount of Rs.7cr for the non-compete

3. Whether the payment is made in a lump-sum manner?

You can assume it was paid in lumpsum. What matters is in income tax return it was claimed in that AY as revenue/business expenditure though in Books of Accounts it may have been amortized as per accounting standards.

4. What is the relevance of section 27? (because section 27 majorly determines the validity of a non-compete agreement and the issue in our case talks about the categorization of the expenditure as revenue or capital)

The HC Order merely traces non-competes in Indian law and discusses Contract Act with its Exception and takes the view that a contractual term to non-compete has to be backed with consideration. It then uses it to explore the nature of consideration for non-compete and ties it to the Income Tax Act. This is from an actual HC judgment, which you may trace, and you are free to interpret it as you see fit.

5. Do we need to address the issue of maintainability or it is presumed that the suit is maintainable?

Leave was granted; it is final hearing. No need to address maintainability.

6. Whether the Assessee has acquired any goodwill with the share purchase agreement?

Don't understand. Answer is no.

7. To whom the shares of the directors have been transferred?

Facts clearly say Director VV transfers his holding to NRI who is the other shareholder and relinquished management.

8. Is the company mentioned here an Indian company or a foreign company registered in India?

Indian company.

9. Did Mr. VV sell his whole 50% of the shares held by him in the company or just the 50% of the total shares held by him?

Entire shareholding ie whole 50% of shares by him and with that he relinquished management.

10. Mr. VV was paid by whom, the NRI or the Company or by both?

With respect to the non-compete amount, the facts are clear that the company paid Mr.VV for the non-compete. This is what we are concerned with. Not anything else.

(The shares themselves obviously would have been paid for by the NRI; in most such agreements, the shareholders and the company are parties. Again the share transfer payment is not of relevance; that the company paid the non-compete and claimed it as business expenditure i.e., revenue expenditure is only of relevance)

11. Did Mr. VV still have ties with the company in reference to moot prop para 29, and if yes what was the extent of those ties?

Don't understand; para 29 is a reference to Hindustan Pilkington decision and it discusses why it would be prudent to have a non-compete in general. In any case, for purposes of this problem, you can obviously assume that once the non-compete amount was paid Mr.VV did not compete in any form directly or indirectly for the period of time specified in the non-compete clause.

12. What is the year of filing the SLP and the date of the hearing of the same?

Don't feel this is relevant.

13. Whether the sum of Rs. 7 crores is just for the Non-Compete Covenant or the entire consideration including share transfer?

Rs.7 crores is for the non-compete covenant alone.

- 14. Whether the Non-Compete clause forms part of the same transfer of shares agreement or, there exists two separate agreements, one for transfer of shares and the other for the Non-Compete covenant?**

See question 2. It is one agreement and the non-compete clause is present with specific figure of Rs.7cr in it.

- 15. What is the system of accounting used in the instant case - Cash or Mercantile?**

Can assume Mercantile system.

- 16. Should we have to restrain the only issue that has been given in the moot problem? or can we add another issue for the 2nd speaker? If it is not possible, can we divide the sub-issues between speakers? please explain.**

No additional questions of law can be framed; there is one key question of law and whatever you argue has to be around it. **Within** this question of law, you can obviously raise new angles/points which you feel is relevant (or) sub-divide the issues as you see fit.

- 17. Shall the statement of facts also include the case laws given in the proposition (the impugned HC judgement)?**

Clarifications not needed.

- 18. What would be the mode and method of Researcher's test?**

The Researcher's test would happen in 2 levels: namely, a preliminary Researcher's test (virtually) and the top 4 researchers would qualify for the advanced round, the Researcher's interview. The Best Researcher would be chosen from the interview.

- 19. As the first page of the memo states the only question of law before the court is the one given in the proposition are we allowed to frame additional issues and also can the maintainability be challenged?**

No additional issues in terms of questions of law can be framed. Maintainability is not under challenge. Refer to clarifications given in question no. 5 and 16.

- 20. Can the memorial include an annexure as well?**

No, annexure must be included in the compendium.

Bottomline: Kindly focus on the **core legal issue** viz a viz the concept of revenue vs capital for the payer of a non-compete agreement; the decisions referred to are landmark ones and along with the provisions of the Act should provide enough arguments around this core issue.