

## ELECTIVE PAPER 6D- ECONOMIC LAWS

### SOLUTION – CASE STUDY 4

#### I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

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1. (b)  
[Hint: Based on Section 2 (1) (u) of the Prevention of Money-Laundering Act, 2002]
2. (b);  
[Hint: Refer Section 8 of the Prevention of Money-Laundering Act, 2002].
3. (b);  
[Hint: Refer section 8 (4) of the Prevention of Money-Laundering Act, 2002].
4. (d);  
[Hint: Based on Section 2 (1) (d) of the Prevention of Money-Laundering Act, 2002]
5. (c);  
[Hint: Refer Section 5 (5) of the Prevention of Money-Laundering Act, 2002].
6. (b);  
[Hint: Refer Section 8 (3) and 8 (6) of the Prevention of Money-Laundering Act, 2002].
7. (b);  
[Hint: Refer Schedule to the Prevention of Money-Laundering Act, 2002]
8. (c);  
[Hint: Refer Section 2 (1) (y) of the Prevention of Money-Laundering Act, 2002].
9. (d);  
Hint: Refer Section 2 (10) of the Prohibition of Benami Property Transactions Act, 1988.
10. (d);  
[Hint: Refer Section 5 (1) of the Prevention of Money-Laundering Act, 2002].

#### II. ANSWERS TO DESCRIPTIVE QUESTIONS

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1. According to section 8 of the Prevention of Money Laundering Act, 2002, on receipt of a complaint or applications, if the Adjudicating Authority has reason to believe that any person

has committed an offence of money laundering or is in possession of proceeds of crime, he may serve a notice of not less than thirty days.

Such person shall be called upon to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property so or, seized or frozen.

However, where a notice specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person. Where if, such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

The Adjudicating Authority shall, after hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued, are involved in money-laundering. Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

According to the above stated provisions, following are the answers:

- (a) Since in the given case, Alberts holds the property jointly in his and his wife's name i.e. Neelima George. As per the above law, such notice shall be served to all persons holding such property. So accordingly, Neelima will also be served the notice, and being heard. Taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued, are involved in money-laundering, then in such case Neelima will also be liable for holding of the joint property.
  - (b) If property is claimed by a person, other than whom the notice has been issued therein, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.
2. (a) According to the Explanation given to section 2(9) of the Prohibition to Benami Transaction Act, Benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract, where—
- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;
  - (ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered

Since the property is in the name of Mr. X and not in others name and it is registered on duly paid stamp duty, it is not a Benami Transaction.

- (b) (i) As per the Prevention of Money Laundering Act, 2002, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering (Section 3).

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 2(1)(u)].

Every Scheduled Offence is a Predicate Offence. The occurrence of the scheduled Offence is a pre requisite for initiating investigation into the offence of money laundering.

In the given case , Chiman Bhai assigned Albert to deliver counterfeit currency notes to be given to his friends in Hongkong , which is an offence falling within the purview of scheduled offence in Part A of the PMLA, 2002 under section 489B of the IPC. This section deals with the using as genuine, forged or counterfeit currency-notes or bank-notes. According to the section whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be liable under the Prevention of Money Laundering Act.

Hence, Albert, Chiman Bhai and his friends in Hongkong, all are said to be liable under the Prevention of Money Laundering Act.

- (ii) The Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 specifies list of transactions, which are permissible in respect of persons resident in India in Schedule I.

Schedule I states the list of permissible classes of transactions made by persons resident in India. List specifies, maintenance of foreign currency accounts in India and outside India by a person resident in India. Accordingly, maintenance of foreign currency accounts in India and outside India by Albert is permissible in FEMA.

**3. (i) Person resident in India**

Section 2(v) of FEMA, 1999 defines the term “person resident in India”. According to Section 2(v) (iii), all business units in India will be “resident in India” even though these units are owned or controlled by a person resident outside India.

Similarly all business units outside India will be ‘resident in India’ provided the business units are either owned or controlled by a person resident in India [Section 2(v) (iv)].

It is necessary to determine the residential status of the person (i.e., Chiman bhai) who owns or controls the business units in outside India.

- (ii) Blue Sapphire Pvt. Ltd., 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 (vii). Accordingly Blue Sapphire Pvt. Ltd. unit in Mumbai, 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. Blue Sapphire Pvt. Ltd unit in Mumbai 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 Blue Sapphire Pvt. Ltd. unit in Mumbai 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.