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L.L.B. Part - III rd

Paper - VIII th

Income Tax Act

Income Chargeable to Income-tax  
under the head "Salaries" Section-15

According to section -15  
the following income shall be chargeable  
to income-tax under the head "Salaries"

- (a) Any salary due from an employer  
or a former employer to an assessee  
in the previous year whether paid or  
not
- (b) Any salary paid or allowed to  
him in the previous year by or on behalf  
of an employer or former employer,  
though not due or before it became  
due to him
- (c) Any arrears of salary  
paid or allowed to him in the previous  
year by or on behalf an employer or  
former employer, if not charged to  
income-tax for any earlier previous  
year.

For the removal of doubts, an  
explanation to Section-15 declares that  
where any salary paid in advance



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is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

After analysis Section 15 the following points are found to be notable.

(1) Employer and employees relationship:-

Any amount to be chargeable under the head "Salary" must arise out of the relationship of the employer and employee or master or servant between the payer and the payee, Every servant is an employee but an agent is not an employee. In fact there is difference between a contract of service and a contract for service. In the case of a contract of service the master or employer cannot only order or require what is to be done but also how it should be done. But in the case of contract for service the master can only order or require what is to be done. Since a contract of a servant is a contract of service and therefore a servant is always treated as an employee but the contract of an agent or a professional man is a contract for service and consequently usually an agent or a



professional man is not treated as an employee. Thus the test which is uniformly applied in order to determine the employer-employee relationship between the payer and recipient of the salary is the existence of a right of control in respect of the manner in which the work is to be done. If the payer of the salary has such right the employer and the employee relationship will exist between the payer and recipient of the salary. However the right to control the manner of work is not exclusive test for determining the employer-employee relationship between the payer and recipient. It would be better to say that in order to establish employer-employee relationship there should be regard to the nature of work, be due control and supervision by the payer over the recipient of the salary. The greater the amount of control exercised over the person rendering the services by the person contracting for them stronger the grounds for holding it to be a contract of service and similarly the greater the degree of independence of such control, the greater the probability that the services rendered are of the nature of professional



(4)

services and that the contract is not one of service. However it is to be noted that no universal rule can be prescribed and every case is to be decided on its own facts and circumstances. Usually the right to control the manner of work distinguishes an employee from an agent, managing director, managing agent, independent contractors etc. Thus ordinarily an agent, managing director, director, radio singer and an actor or actress are not employees and consequently the remuneration received by them cannot be charged to income-tax in their hands. The head profits and gains of business or profession or salary but under the head "income from other sources". But if any of them is employed by their respective employers on time basis, the amount will be taxed in the hands of the recipient under the head "salary".

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