



Income From Salary

By Sidharth Jain
B.Com, FCA, LLB

Topics to be deliberated:-

- Legislative History.
- Meaning and Definition of Salary.
- Basis of Taxation of Salary.
- Components forming part of Salary.
- Allowances – Exempt and Taxable.
- Taxation of Retirement/ Terminal benefits.
- Concept & Valuation of Perquisites.
- Advisories & checks while examining Income from Salaries.

Legislative History:-

- Relevant provisions contained in Chapter IV-A.
- Relevant Sections 15, 16 & 17 of I.T. Act 1961.
- Provisions existed in earlier Indian Income Tax Act of 1922.
- Annual Circular explaining computation & taxation of Salaries by CBDT. (Circular No. 01 of 2010 dated 11-01-2010 explaining provisions for F.Y. 2009-10)

Meaning and Definition of Salary

- Employee-Employer relation must.
 - Exists-196 ITR 618 (Ker), 202 ITR 646 (Kar), 06 SOT 60 (Del)
Salary of CM of a State – Lalu Prasad v/s CIT 216 ITR 186 (Pat)

 - Does not Exist- 223 ITR 264 (Mad), 254 ITR 355 (P&H), 306 ITR 126 (Raj), 75 ITD 484 (Cal)
Salary of MP/MLA, Salary of partners

- Salary from more than one employer also includible

- No distinction between Salary and Wages
 - Wages- Blue colored and manual jobs
 - Salary- White colored and non-manual (mental application is higher qua physical efforts)

Meaning and Definition of Salary

- Defined u/s 17(1) of the Act.

- Inclusive definition

The scope of Inclusive definition does not restricts to those words which occur in definition, but extends to many other things not specified therein.

All Indian Defense Accounts Association v/s UOI 195 ITR 494 (All)

- Wages
- Annuity or Pension
- Gratuity
- Fee, Commission, Perquisites or profit in lieu/ addition to wages or salary
- Advance salary
- Cash value of unavailed leave

Basis of Taxation of Salary:-

- Provisions contained in Sec. 15.
- Taxable on accrual or receipt whichever is earlier.
 - Due basis (earned even if not received).
 - Receipt basis (received even if not earned).
 - Arrears (not due or received earlier is taxable when due or received).

CBDT Circular No. 6/2009 dated 31-08-09 & F. No. 173/163/2008/ITA-I dated 26-06-09 issued by CBDT to remove genuine hardship upon implementation of 6th Pay Commission.

Components forming part of Salary: -

- Basic Salary
- Fees, Commission, Bonus, Pension, etc.
- Taxable value of Cash Allowances
- Taxable value of Retirement Benefits
- Taxable value of Perquisites

Basic Salary:-

- Basic Salary is fixed as per employment terms
Either fixed amount as percentage of CTC OR
at a graded system.
- Date of joining 01-06-2006 in pay scale of
12000-400-16000 with annual increments on 1st
June. Please Determine Basic salary of April
2010 & June 2010?

Fees, Commission, Bonus, Pension, etc.

- Incentive Bonus to DO of LIC – taxable as Salary and not business income. 283 ITR 384 (P & H)
- Director sitting fees – not Salary
- Commission may be paid at a fixed amount or as fixed percentage of turnover
Commission received from Employer in addition to Salary is assessable as Salary
CIT v/s Bijay Kishore Kapoor 202 ITR 129 (Ori)
Practical experience reveals many Employers deducting TDS on Commission to employees u/s 194H instead of section 192.
- Un- commuted pension post retirement is Salary Income. Family pension to legal heirs of deceased employees is Income From Other Sources.

Components forming part of Salary: -

- Taxable value of Cash Allowances
(Separately Discussed in subsequent slides)
- Taxable value of Retirement Benefit
(Separately Discussed in subsequent slides)
- Taxable value of Perquisites
(Separately Discussed in subsequent slides)

Taxable value of Cash Allowances: -

- Allowance is a fixed monetary amount paid by the employer to the employee (over and above basic salary) for meeting certain expenses, whether personal or for the performance of his duties.
- Generally taxable and includible in gross salary unless specifically exempt.

Taxable value of Cash Allowances: -

For Tax Purpose 3 kinds of allowances: -

- Fully Exempt Cash allowances
- Partially Exempt Cash allowances
- Fully Taxable Cash allowances

Fully Exempt Cash allowances

- Allowances by whatever name to Judges of Supreme Court/High Court
(Based on their service condition Rules)
- Allowances to Employees of United Nations and its allied organizations
(Based on international treaties and UN Charter)
- Income including allowances by whatever name to Foreign Ambassadors, Consulates, Mission Heads, etc.
(Based on Bilateral Treaties)

Partially Exempt Cash allowances

- Exemption subject to incurrence of expenditure.
- Exemption allowed statutorily and subject to conditions prescribed therein.
- HRA, LTA, Entertainment Allowance, Specified allowances u/s 10(14) r/w Rule 2BB.

Partially Exempt Cash allowances (HRA u/s 10[13A])

- Exemption allowed subject to **Least of following:** -
 - HRA actually received by the assessee
 - Excess of rent paid over 10% of salary
 - An amount equal to 50% of salary (If accommodation is situated in Metros) 'Or' an amount equal to 40% of salary (elsewhere)

Salary for this purpose includes Basic, DA and commission if paid as fixed % of turnover [CIT v/s Gestetner Duplicators Ltd].

PRACTICAL PROBLEM

Mr. X is employed in A Ltd. getting basic pay of Rs.20,000 per month and dearness allowance of Rs.7,000 per month (half of the dearness allowance forms part of salary for the purpose of retirement benefits). The employer has paid Commission @1% on the sales turnover of Rs.20lakhs, and house rent allowance of Rs.6,000 per month. X has paid rent of Rs.7,000 per month for a property at Gurgaon while serving in Delhi. Compute his HRA exemption for the assessment year 2010-11?

Solution of the Problem

- HRA received by the assessee
-

- Excess of rent paid over 10% of salary
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- An amount equal to 50% of salary (If accommodation is situated in Metros) 'Or' an amount equal to 40% of salary (elsewhere)
-

Partially Exempt Cash allowances (LTA u/s 10[5])

Exemption allowed subject to following conditions:-

- Employee must travel himself and/or with his family
- Travel limited only to India
- Exemption limited to shortest possible route
- Only travel expenses qualify, no exemption for hotel bill, fooding, etc.
- Exemption limited only to twice in a block of four calendar years. Current Block began on 01-01-10.
- Un availed LTA can be carried forward from one block to another block. However carry forward limited to one LTA which has to be claimed in the first year of the next block.

Partially Exempt Cash allowances **(Entertainment Allowance u/s 16[ii])**

- Exemption/Deduction available only to central/state govt. employees.
- Allowance first added in gross salary.
- Deduction available only thereafter.

Partially Exempt Cash allowances **(Specified Allowances u/s 10[14] r/w Rule 2BB)**

- Special Allowances for meeting official expenditure [Rule 2BB(1)]

Certain allowances are given to the employees to meet expenses incurred exclusively in performance of official duties and hence are exempt to the extent actually incurred for the purpose for which it is given: -

Traveling Allowance

Daily Allowance

Conveyance Allowance

Helper Allowance

Research Allowance (Only in Educational and Research Institutes)

Uniform Allowance (Purchase and Maintenance of Uniform).

Partially Exempt Cash allowances (Specified Allowances u/s 10[14] r/w Rule 2BB)

- Special Allowances to meet personal expenses [Rule 2BB(2)]

There are certain allowances given to the employees for specific personal purposes and the amount of exemption is fixed i.e. not dependent on actual expenditure incurred in this regard. These allowances include: -

S.NO	NAME	PARTICULARS
1	Children Education Allow	To meet the Education cost on his child is exempt to the extent of Rs.100 per month per child for maximum of 2 children (grand children are not considered)
2	Children Hostel Allow	To meet the hostel expenditure on his child is exempt to the extent of Rs.300 per month per child for maximum of 2 children
3	Transport Allowance	To compensate the cost incurred in commuting between place of residence and place of work. An amount upto Rs.800 per month paid is exempt.



Fully Taxable Cash allowances

- Residual Category.
- If neither exempted fully nor partially.
- No Exhaustive list

S.N	NAME	PARTICULARS
1	Dearness Allowance	To compensate against the rise in price level in the economy
2	City Compensatory Allowance	To compensate the high cost of living in big cities
3	Tiffin / Lunch Allowance	It is given for lunch to the employees
4	Non practicing Allowance	This is normally given to professionals (like doctors, CA, etc.) who are in government service and are banned from doing private practice
5	Warden or Proctor Allowance	These allowances are given in Educational Institutions for discharging specified duties
6	Deputation Allowance	Given where an employee is sent from his permanent place of service to some place or institute on deputation for a temporary period.
7	Fixed Medical Allowance	Fully taxable even if some expenditure has actually been incurred for medical treatment of employee or family
8	Servant Allowance	It is fully taxable whether or not servants have been employed by the employee.

Taxation of Retirement/ Terminal benefits

- Sec. 10(10) – Gratuity

Limit has been increased to Rs 10 Lakhs The Payment of Gratuity (Amendment) Act, 2010 on May 18, 2010,

- Sec. 10 (10A) – Pension

- Sec. 10 (10AA) – Leave Encashment at super-annuation.
Leave Encashment while in service –Taxable 273 ITR 126 (All)

- Sec. 10 (10B) – Retrenchment Compensation

- Sec. 10 (10C) – Voluntary Retirement Scheme

Refer 1st Explanation– no relief u/s 89(1) available any more

Judgements of various High Courts nullified by Legislative amendment by FA 2009, 322 ITR 119 (Raj), 318 ITR 167 (Mad.), etc.

Concept & Valuation of Perquisites:-

Perquisites are defined as any **casual emolument or benefit attached to an office** or position **in addition to salary or wages**. It denotes some thing that benefits a man by going into his pocket; it does not cover mere reimbursement of necessary disbursements. Such benefits are normally given in kind but should be capable of being measurable in money terms. Perquisites are taxable and included in gross salary only if they are: -

- (i) Allowed by an employer to an employee,
- (ii) Allowed during the continuation of employment,
- (iii) Directly dependent on service,
- (iv) Resulting in the nature of personal advantage to the employee and
- (v) Derived by virtue of employers authority.

(The old controversy as to valuation of particular **perquisite** in the regime of FBT has been resolved and all **valuation mechanism** has been now **specified in Rule 3** of the Income Tax Rule, 1962.)

RULE	PARTICULARS
Rule 3(1)	The value of residential accommodation provided by the employer. Accomodation Furnished or unfurnished
Rule 3(2)	The value of perquisite by way of use of motor car to an employee by an employer
Rule 3(3)	The value of benefit of services of a sweeper, a gardener, a watchman or a personal attendant
Rule 3(4)	The value of the benefit resulting from the supply of gas, electric energy or water
Rule 3(5)	The value of benefit resulting from the provision of free or concessional educational facilities
Rule 3(6)	The value of any benefit or amenity resulting from the provision by an employer who is engaged in the carriage of passengers or goods, for personal or private journey free of cost or at concessional fare
Rule 3(7)(i)	The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household

RULE	PARTICULARS
Rule 3(7)(ii)	The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee.
Rule 3(7)(iii)	The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. Sodexo however is exempt Rs. 50/- per day meal coupon
Rule 3(7)(iv)	The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions
Rule 3(7)(v)	The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card
Rule 3(7)(vi)	The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred in a club
Rule 3(7)(vii)	The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset
Rule 3(7)(viii)	The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer directly or indirectly to the employee or any member of his household
Rule 3(7)(ix)	The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer



**QUESTIONS AND
QUERIES ARE
WELCOME**

Sidharth Jain, FCA, LLB
sidhjasso@yahoo.com