

Good Evening !  
Study Circle Meet on

Recalling Taxation of  
Income under the head Salary and House Property  
At Nagpur Branch of WIRC of  
The Institute of Chartered Accountants of India

27 January,2023

# Article 246 of Constitution of India

- Schedule 7 List 1 Union List Entry 82 exclusively empowers the Parliament of India to to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule.

# Schedule 7

- Entry 82: Taxes on income other than agricultural income.

# Income Tax Act, 1961

- **Total Sections 298**

- Schedules to the Act 14

# Income Tax Rules, 1962

- **Total Rules 129**

- Appendices to Rules

- Total Forms 68



- Notifications: Delegated authority under the Act and Rules

- Circulars
- Circulars are instructions to subordinates on a particular matter.
- Circulars could be beneficial to the assesses.
- Circulars which are not beneficial to the assesses could be ultra vires of the Act and Rules and not binding on the assesses.

- Judgments pronounced by various High Courts and the Supreme Court of India

- Judgments pronounced by Commissioners of Income Tax and Tribunals.

# CBDT Central Board of Direct Taxes

- Constituted under the Central Boards of Revenue Act, 1963
- Section 295 empowers the Board to make Rules

Topic 1

# Income from Salaries

Sections 15,16 and 17

# Salary includes

- (i) wages;
- (ii) any annuity or pension;
- (iii) any gratuity;
- (iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;
- (v) any advance of salary;
- (va) any payment received by an employee in respect of any period of leave not availed of by him;
- (vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule;
- (vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and
- (viii) the contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;

- Salary or Professional Fees or Labour Charges
- *Salary means: the total amount of money that an employee is paid every year to do their job, or one of the payments they receive each month as part of this:*
- An **employee is a worker hired by an employer to do a specific job.** Employers control how employees are paid, when employees work, and how employees work. In exchange, employees get benefits that contractors don't.
- “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer.
- There is no linkage between the amount paid and the number of hours worked.
- salary provides a guaranteed fixed income,



# Perquisites include

- the value of rent-free accommodation provided to the assessee by his employer;
- the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;
- the value of any benefit or amenity granted or provided free of cost or at concessional rate
- Etc etc

# Income Tax Rules, 1962

- Rule 3: Valuation of perquisites
- Rule 3A: **Exemption of medical benefits from perquisite value in respect of medical treatment of prescribed diseases or ailments in hospitals approved by the Chief Commissioner.**
- Rule 3B: **Annual accretion referred to in the sub-clause (viiia) of clause (2) of section 17 of the Act.**

# Chargeability Section 15

- Salaries DUE, paid or not ,from employer or former employer to an assessee in the PY
- Salary paid or allowed by or on behalf of an employer or a former employer though not due or before it became due to him

# Taxability of Notice period Pay

- Is the notice-period-pay received by employee taxable as salary?

# Taxability of Notice-period-Pay

- Is the notice-period-pay deducted by employer or paid by employee back to the employer deductible from salary?
- Is it an application of Income?

# Taxability of Notice period Pay

- Is the deduction of salary on account of “leave without pay ” an application of Income?

# Taxability of Notice period Pay

- Profits in lieu of salary includes:
- The amount of any compensation due to or received an by assessee from his employer or former employer at or in connection with termination of his employment or in the modification of the terms and conditions relating thereto.

# Meaning of Salary DUE

- Fixation of Salary was mistaken and three increments were given in excess.
- The assessee refunded the excess salary paid every year in instalments and declared net salary against actual salary accrued to her.
- The assessing officer rejected the claim of the assessee and sought to tax the amount of Salary which accrued to her without any deduction for recovery.
- **Vajreshwari B Parikh vs Income Tax officer**
- **ITA No.1512/Ahd/2014**



# Deductions from Salary Sec 16

- Rs.50000 or the amount of the salary which ever is less.
- Allowance in the nature of an entertainment allowance from salary received from government
- Tax on employment

# Exempt Income under the head Salary

- Section 10(5)(a) the value of any travel concession or assistance received by, or due to, him for travel in India from his employer for himself and his family, in connection with his proceeding **on leave to any place in India** ;
- The exemption referred to in sub-rule (1) shall be available to an individual in respect of two journeys performed in a block of four calendar years commencing from the calendar year 1986.
- What if?
- The assessee has not availed the concession in the block of four years?
- Then the assessee can avail it once in the first year of next block.

# LTA Claim

- Now what if?
- During the first year of next block, the assessee is not in employment and has income from Business and other income other than salary?
- 10(5)(b) comes to our rescue as follows:
- *from his employer or former employer for himself and his family, in connection with his proceeding to any place in India **after retirement from service or after the termination of his service***
- Then how to claim it in ITR?

- Sec 10(10)(i) DCRG from Central Govt 100%
- Sec 10(10)(ii) Gratuity received under the Payments of Gratuity Act 1972 to the extent given in the Act
- Sec 10(10)(iii) Any other Gratuity one-half month's salary for each year of completed service, limited to Rs.20 lakhs. This limit of Rs.20 lakhs is a lifetime limit for such gratuities.

# Exempt Income under the head Salary

- Sec 10A (i) any payment in **commutation of pension** received
- from Central Govt and any other employer.
- Sec 10AA(i) **leave salary** in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise from Central or state Govt 100% ;
- Sec 10AA(ii) **leave salary received by an employee other than the above limit Rs.300000. life time.**
- 10(10)(c) VRS upto Rs.5 lakhs

# Exempt Allowances:

- 10(13) House rent allowance Rule 2A
- Conditions for claiming HR Allowance
- The least of the following is exempt:
  - i) Actual House Rent Allowance received by the employee
  - ii) Excess of rent paid over 10% of SALARY
  - iii) Amt amount equal to
    - 50% if accommodation is at Bombay, Calcutta, Delhi or Madras or
    - 40% if accommodation is at any other place
- SALARY means Basic plus Dearness Allowance but excludes other allowances

- Sec 10(14) Allowance specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit,

- Relief under Section 89(1) Relief is calculated under this Section for tax on Arrears of Salary or Salary received in Advance or arrears of family pension.
- Relief under [section 89](#) is available to an individual if he has received
- Salary or family pension in arrears or in advance [Rule 21A (2)]
- Gratuity in excess of exemption under [section 10\(10\)\(ii\)/\(iii\)](#) [Rule 21A(3)]
- Compensation on termination of employment [Rule 21A(4)]
- Commuted pension in excess of exemption under [section 10\(10A\)\(i\)](#) [Rule 21A(5)]
- In case of payment received other than above CBDT can allow relief under [section 89](#) after examining each individual case. [Rule 21A (6)]



# Provisions of Section 115BAC

- without any exemption or deduction under the provisions of clause (5) That is Leave Travel Assitance
- or clause (13A) that is HRA
- or prescribed under clause (14)
- of section 10 or section 16
- Deductions u.s 80CCD ar also not available
- If you opt for computation as per Section 115BAC

## Topic 2

# Income from House Property

Sections 22,23,24,25,25A,26 and 27

# Exempt House Property Incomes

- Farm House Sec 2(1A)c with 10(1)
- Annual value of any one palace of an ex-ruler 10(19A)
- Property income of a local authority 10(20)
- Property income of an approved scientific research association 10(21)
- Property income of a University or other educational institutions 10(23C)
- Property income of a hospital or other medical institution 10(23C)
- Property income of a trade union 10(24)
- House property held for charitable purpose 11
- Property income of a political party 13

# Income from House Property

- Section 22
- Assessee should be the OWNER of the House Property.
- The word ASSESSEE has been used to mean any “person” as per Section 2 clause (7) as such any “person’ as per Section 2 clause (31) includes:
- An individual, a Hindu undivided family, a company, a firm, an AoP or a BoI, a local authority and every artificial juridical person.

Income from House Property continued.....

- Owner: Any assessee who acquires the property by way of Purchase, Gift, Succession, Partition of family, exchange etc.
- **EXCEPTIONS:** Deemed owner Section 27.
- **HP Transferred to SPOUSE otherwise than for adequate consideration not being a transfer in connection with an agreement to live apart or to a minor child not being a married daughter**[Section 27(i);
-

Income from House Property continued.....

- **EXCEPTIONS:** Deemed owner Section 27.
- **Holder of an impartible estate** The impartible estate, as the word itself suggests, is a property which is not legally divisible [**Section 27(iii)**];

Income from House Property continued.....

- **EXCEPTIONS:** Deemed owner Section 27.
- **Member of a Co-operative Society, etc.** [Section 27(iii)]: By virtue of holding a share of a Cooperative Society a person becomes the deemed owner of the brick and mortar.

Income from House Property continued.....

- **EXCEPTIONS:** Deemed owner Section 27.
- **Person in Possession of a Property [Section 27(iia)]: As per Section 53A of the Transfer of Property Act, 1882**



# Sec 22 :Income from House Property

- Annual value of property consisting of any **buildings or lands appurtenant** thereto shall be chargeable to income-tax under the head “Income from House Property”.
- “House” word has been used in only marginal notes.
- But the charging Section 22 does not use this word!
- Meaning of “HOUSE”
- What about a Stadium like stadium owned by TATA, a warehouse, a Hotel, an Airport building, a Theatre, a railway station building etc....

- Chennai Properties And Investments Ltd. vs The Commissioner Of Income Tax
- The Supreme Court of India held that:
- Where the main object of a Company is to acquire the properties and to let out those properties, the income from letting out the properties was taxable as Income from Business or Profession(PGBP)
- We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner.

## Section 23: Annual value how determined

- Annual Value shall be deemed to be –
- the sum for which the property might reasonably be let from year to year Sec 23(1)(a)
- If actual rent received or receivable is in excess of the above then the actual value received or receivable shall be deemed to be the annual value Sec 23(1)(b)

# Steps to Compute Gross Annual Value

- Determine the following
  - Municipal Valuation (MV)
  - Fair Rent (FR)
  - Standard Rent (SR) *Generally, rent prescribed by Rent Control Act.*
- Step I. Compute Expected Reasonable Rent which is higher of MV or FR **restricted** to SR.
- Example:
  - MV is 840000
  - FR is 720000
  - SR is 1200000
- Expected Reasonable Rent would be?

# Steps to Compute Gross Annual Value

- Determine the following
  - Municipal Valuation (MV)
  - Fair Rent (FR)
  - Standard Rent (SR) *Generally, rent prescribed by Rent Control Act.*
- Step I. Compute Expected Reasonable Rent which is higher of MV or FR **restricted** to SR.
- Example:
  - MV is 840000
  - FR is 720000
  - SR is 1200000
  - Expected Reasonable Rent would be 840000

- Step II. Compute Actual received/receivable less UR unrealized rent. AR
- Step III. Compare ERR and AR
- Step IV. The higher is GAV



- Actual Rent Received
- Actual Rent Received will be Rent Receivable less Unrealised Rent





# Section 23: Annual value how determined

- Key requirements for property to qualify as being LET:
- The property should have been LET and was vacant.
- What does LET mean. *(Conditions derived by author from Court decision in case of Sachin Tendulkar)*
  - *Ready for being let*
  - *The owner is ready and has all intention to let*
  - *The owner has done certain acts which can prove that the property was capable of being let but actually not taken on rent by anybody.*

# Section 23: Annual value how determined

- Deduction of actual payment of **taxes levied by any local authority** irrespective of the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him.

# Section 23: Annual value how determined

- Unrealised Rent

# Section 23: Annual value how determined

- Rule 4

# Section 23: Annual value how determined

- Unrealised Rent: Rule 4
- For the purposes of the *Explanation* below sub-section (1) of section 23, the amount of rent which the owner cannot realise shall be **equal to the amount of rent payable but not paid** by a tenant of the assessee and so proved to be **lost and irrecoverable** where,—
- a) The tenancy is bonafide;

# Unrealised Rent conditions Rule 4

- b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

# Unrealised Rent conditions Rule 4

- c) the defaulting tenant is not in occupation of any other property of the assessee;



# Unrealised Rent conditions Rule 4

- d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

# Section 23: Annual value how determined

- Timing of deduction of unrealized Rent
- Point of time in which the deduction from Annual Value to be claimed as per Section 23(1)(a) and

# Case Law on Unrealised Rent allowability

- In case, however, the amount of irrecoverable rent exceeds the amount of rent payable for a year, the right of the assessee to claim the benefit of the above exemption does not, in our opinion, get exhausted by his having claimed exemption in one year.
- Supreme Court of India
- Commissioner Of Income-Tax, ... vs Madho Pd. Jatia on 17 August, 1976
- Equivalent citations: 1977 AIR 420, 1977 SCR (1) 665

# Case Law on Unrealised Rent allowability

- During the pendency of suit for recovery of rent, it can not be said that the rent is irrecoverable. For allowability of deduction of unrealized rent , rent must be irrecoverable CIT v Airflo Transport(I) Pvt Ltd(1991) 192 ITR 572
- There is no prohibition of deduction of more than one year's rent from Annual value.CIT v Brahmachari (Dr.N)(1992) 107 CTR (Cal) 270

# Law of Limitation

- Article 52 of Law of limitation prescribes a time of three years for institution of suit for recovery of unpaid rent

# Annual Value of Self Occupied property

- Annual Value of TWO self occupied House Properties shall be NIL.
- Section 23(2)
  
- If the properties are
- actually let during the year or
- Any other benefit is derived by the owner
- then provisions of this section will not apply. Sec 23(3)

# Notional Income from House Property

- If the property consists of more than two houses then at the option of the assessee the Annual Value of any two houses shall be taken to be NIL and the annual value of the remaining houses shall be determined as if such house or houses had been let.

# Properties which are Stock-in-trade

- Annual value of properties Buildings or Lands appurtenant thereto which are held as **Stock-in-trade** and not let, the Annual value of the property shall be taken to be NIL upto two years from the end of Financial Year in which the certificate of completion of construction of the property is obtained from the competent authority. Section 23(5).



# Deductions from income from House Property Sec 24

- a) A sum equal to thirty percent of the annual value
- b) Amount of any Interest payable on borrowed capital if the property which is self occupied property us 23(2) has been acquired constructed, **repaired, renewed or reconstructed**
- Limited to Rs.30000 *first proviso*
- Limited to Rs.200000 if the property is **acquired or constructed** with borrowed capital on or after 1.4.1999 and such acquisition or construction is completed within 5 years from the end of FY in which the capital was borrowed *second proviso*

# Interest payable on borrowed capital

- Interest payable for the period prior to the **acquisition or construction shall be eligible for deduction in five equal instalments subject to overall deduction of Rs.200000/-**
- **The overall deduction under the *first and second proviso* and the interest payable on period prior to the acquisition or construction, shall be restricted to Rs.200000.**

# Interest on borrowed capital

- Whether there is any embargo on deductibility of Interest payable on borrowed capital from wife, husband, relative, friend or any third party?
- Section 24 does not put any such restrictions.
- Should the rate of Interest be bench marked ?
- If the interest is excessive, then?
- It may still be allowed till it is being offered to taxation by the payee.

# Arrears of rent and unrealized rent received subsequently. Sec 25A

- Arrears of rent **received (NOT RECEIVABLE)** or the unrealized rent received subsequently from a tenant by an assessee shall be deemed to be the income from house property in respect of the financial year in which such rent is received or realized shall be included in total income of the assessee under the head Income from house property whether the assessee is the owner of the property or not in that financial year.
- Deduction of 30% of such Arrears of rent **received** or the unrealized rent shall be allowed as deduction.

# Taxability of Legal heirs

- What if the Arrears of Rent and/or Unrealised rent of previous years is paid by the legal heirs of the deceased and received by the legal heirs of the tenant after say 20 years of his death?

# Taxability of Legal heirs

- Section 159 of Income Tax Act: Where a person dies, his legal representatives shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.
- Of course to the extent to which the estate left behind by the deceased is capable of meeting the liability.

# Co-owners Sec 26

- If the property is Co-owned then what?
- They shall not be assessed as association of persons
- Each share shall be computed in accordance with sections 22 to 25 and shall be included in his total income

# Set off of loss Sec 71,71B

- Loss from “Income from house property” shall be restricted to Rs.200000 for set off from Income from other sources.
- The remaining loss shall be carried forward to the following assessment year and set off against income from house property assessable for that assessment year and the remaining loss shall be carried forward to next assessment year not being more than 8 assessment years immediately succeeding the assessment year for which the loss was first computed.



# Income from a Building in the immediate vicinity of Agricultural Land Section 2(1)(c)

- any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land,

# Provisions of Section 115BAC

- Deduction of Interest on Borrowed capital for acquisition or construction of house property which referred to in clause (b) of section 24 (in respect of the property referred to in sub-section (2) of section 23) means self occupied property shall not be allowed if you opt for tax calculation as per Section 115BAC.

Thanks.