Bombay Chartered Accountants' Society

Filing of Income Tax Returns for the Assessment Year 2008-09

by

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Return of Income

- What is Return of Income?
- Return of Income now called Indian Income Tax Return
- Concept of E- returns.
- Annexure less returns - Submission of documentation for evidential purposes is dispensed off at time of filing of return.
- Supporting documents could be required at subsequent stages.

Definition of Income

- Inclusive definition as per section 2(24)
- Amendment in definition of capital asset- section 2(14) to bring within the purview of capital assets personal effects in the nature of archaeological collections, drawings, paintings, sculptures, works of art.
- Hence receipts towards sale of any of the above assets liable to capital gains tax.
- By implication, Stamps and Coins collected as personal hobby still excluded.

Exempt Incomes

- Receipts in nature of income not liable to tax in view of specific exemptions as per Chapter III – Section 10 egs share of profit from registered firm, interest on PPF, LIC maturity proceeds, dividend from Indian Companies, Long Term Capital Gains referred to in section 10(38)
- Extension of Sunset clause for Section 10A & 10B upto 31-3-2010
- Disclosure requirements in Income Tax Return
- Disallowance of Expenditure incurred to earn exempt income – Section 14A. Basic intention as per the FMs speech is to ensure that direct expenditure incurred to earn exempt income is not claimed as deduction against taxable income.

Section 14A

- Section 14A – one of the most controversial provisions in recent times.
- Rule 8D – Notified on 24-3-2008 empowering the AO to determine disallowance u/s 14A.
- If AO is not satisfied with assessees working of disallowance or the claim that no expenditure has been incurred for earning exempt income, he can determine the amount of disallowance as being aggregate of

  (i) direct expenditure,

  (ii) interest in proportion of average investment value & other assets value and

  (iii) 1/2 % of average investment value.
- Very subjective provision and likely to lead to a lot of litigation.

Residential Status

- Taxability of Income depends on residential status.
- For a resident – worldwide income liable to tax.
- Concept of Not Ordinarily Resident is now significantly diluted.
- Foreigner coming to India on employment
- Indian national going abroad for employment – post September – more than 182 days in India – worldwide income liable to tax.

Income from Salary

- Salary – Inclusive definition
- Basis of charge is employer employee relationship. Exceptions joining bonus, arrears of salary to ex-employee, pension etc.
- Salary to partner is taxable as business income.
- Computation of salary and payment of taxes thereon done by employer.
- Form 16 - Salary certificate & Form 12BA – valuation of perquisites, issued by employer – source document for computing salary for Income Tax Return.

Income from Salaries (Con't)

- Certain benefits/ amounts received pursuant to employment on which Fringe Benefit Tax (FBT) is paid by employer are no longer taxable in employee's hand as perquisites.

  [Eg. Provision of car and driver, Reimbursement of motor car or telephone expenses]
- Salary from more than one employer could result into short deduction of TDS
- Section 89 – arrears of salary
- Reconcile amounts in Form 16 with actual receipts in bank accounts.
- Certain deductions under Chapter VIA such as 80G (donation) , 80DDB (expenditure for medical treatment of self or dependent family member in respect of specified diseases and ailments) – No cognizance by employer. To be considered while computing total income.

Income from House Property

- Important terms –
  - House Property,
  - Owner,
  - Annual Value
- House Property includes both residential and commercial property. Includes land appurtenant to the building but not only plot of land.
- Owners normally refer to legal owners. Exceptions individuals gifting property to spouse or minor child, member of co-operative society etc.
- Annual Value – sum chargeable to tax being the higher of actual rent received/ receivable and the annual letting value. Deeming provision for income even though there may be no actual income. In respect of one SOP, annual value is Nil.

Income from House Property (Con't)

- Sub letting – not to be included. Taxable as Income from other sources
- Income from rent of land – Taxable as Income from other sources.
- Rent from godown – if purely rent, taxable as Income from House Property.
- Warehousing Charges – depends on whether it is carried out as a business operation and whether the warehouse is used by the owner as a commercial asset.
- Business Service center – nature of other services provided.
- Rent from furnished accommodation – to see the substance of the transaction.

Income from House Property (Con't)

- Three Deductions from Annual Value–
  - Municipal taxes – on actual payment basis,
  - 30% Standard Deduction of Annual Value less Municipal taxes,
  - Interest on borrowed capital.

Income from House Property (Con't)

Deduction of Interest

- Deduction from year of possession. Pre-possession interest to accumulate & amortise over five years commencing from year of possession.
- Deduction of interest on accrual basis, payment is not pre-condition. [Refer,CIT v/s Devendra Bros & Co. [200 ITR 146] (All).
- Penal interest for defaults not allowable as deduction
- In respect of SOP, for loans obtained on or after 1.4.99, interest upto Rs. 1,50,000; earlier Rs. 30,000. Limit applicable to each of the Joint Owner.
- For let out property, actual interest allowable without any caps.

Profits & Gains of Business or Profession

Method of Accounting

- Business Income & Other Sources – option to assessee – cash or mercantile regularly employed
- Can employ cash for one source of income and accrual for the other
- Even under same head of income, for different sources of income, different methods of accounting can be employed subject of course to regularity/ consistency.

Profits & Gains of Business or Profession (Con't)

Disallowance of Expenditure 40(a)(ia)

- Default in complying with TDS provisions with respect to timely payment of TDS on interest, commission, brokerage, rent, fees for technical, professional services paid to resident, payments to contractors/ sub-contractors could lead to disallowance of the entire expenditure itself.

Profits & Gains of Business or Profession – 40(a)(ia)(Con't)

Particulars of tax deduction	Particulars of payment of TDS	Year of allowabilty of expenditure in computing business income
Between 1st April 2007 to 29th February 2008	On or before 31-3-2008	AY 2008-09
Same as above	After 31st March 2008	In the AY relevant to the PY in which the tax was paid
March 2008	On or before due date of filing return of income	AY 2008-09
Same as above	After the due date of filing return of income	In the AY relevant to the PY in which the tax was paid

Profits & Gains of Business or Profession (Con't)

Disallowance u/s 40A(3)

- Disallowance of 20% increased to 100% of the expenditure if payment exceeding Rs.20,000/- was made otherwise than by account payee cheque/ bank draft.
- If such payment is made in subsequent year, disallowance will not go back to the year of incurrence but deemed to be income in the year of payment.

Profits & Gains of Business or Profession

Certain other Provisions relating to disallowance of expenses to be considered while determining business income

- Section 43B payments
- FBT not deductible [Section 40(a)(ic)]
- STT not deductible. [Section 40(a)(ib)] but rebate under section 88E is still allowable subject to eligibilty. Amendment regarding allowability of STT is w.e.f AY 2009-10

Capital Gains

- Cumulative conditions: – “capital asset”, “transfer” & “consideration” [Section 45].
- Taxation in the year of “transfer”. [Section 2(47)]
- Certain concessions to Long term capital gains [Tax rate, reinvestment benefits, indexation, total exemption]
- For depreciable asset, computation under “Block of assets”. [Section 50] – Beware of Section 50C: – Applicable to “Land” or “building”
- Section 54EC investment benefit also available to Section 50 gain.

Capital Gains – Shares & Securities Specific

Particular	STT paid?	LTCG	STCG
(i) Listed securities or units where transaction of sale is			
• Entered into recognised stock exchange	Paid	Nil	10%
• Not entered into recognised stock exchange (Buy back, open offer, etc)	Not paid	*10%/ 20%	30%
(ii) Unlisted securities	Not paid	*10%/ 20%	30%
* Tax @ 10% without taking indexation benefit.			
No deduction admissible under Chapter VIA			
STT is not part of cost of acquisition as per section 48			

Capital Gains (Con't)

- Shares & Securities - Burning issue on characterization of Income. Capital Gains vs Business Income.

- Would depend on the facts of each case – Useful reference to Circular of the CBDT No 4/2007 dated 15-6-2007

Income from Other Sources

- Residuary head :
  - Foreign dividend income
  - Keyman insurance receipt by Legal heirs.
  - Interest income.
  - Family Pension – Standard deduction is available upto maximum Rs.15,000/- [Sec.57 (iia)].
  - Letting out of Plant & Machinery, if not taxable as business income
  - Gifts [Section 56(1)(v)]
- Restrictive expense deduction [Sec 57 (iii)].

Income from Other Sources (Con't)

Gifts

- Addition to definition of income from AY 2005-06.
- Sums of money received by an individual or HUF exceeding in aggregate Rs. 50,000 during the year.
- Certain exceptions such as from relatives, on the occasion of marriage, inheritance etc.

Clubbing of Income

- Clubbing of Minor’s income – section 64(IA)
- Exceptions :
  - Income of minor child suffering from any disability specified in section 80U
  - Income from manual work done by the child
  - Income on account of application of skill, talent, specialised knowledge or experience eg modelling, realty shows, TV stars, film stars
- Exemption u/s Section 10(32)- Rs. 1500 per minor child. To be clubbed in the hands of the parent whose total income is greater. Thereafter to be clubbed with same parent for all children.

Clubbing of Income (Con't)

- Salary, commission, fees or remuneration to a spouse from a concern in which the individual has substantial interest will be clubbed.
- Income from assets transferred without adequate consideration to spouse or to daughter in law.

Set off and carry forward of losses – section 71 to 79

- Speculation – restriction on number of years to 4 years w.e.f AY 2006-07. What happens to past losses?
- Business loss cannot be set off against salary.
- Depreciation losses can be carried forward indefinitely. Hence while setting off b/f losses ensure that business losses are first set off.

Minimum Alternate Tax

- 115 JB scope expanded significantly to include 10A & 10B profits
- Income from undertaking in SEZ to be excluded from book profits
- Deferred tax is equated with normal tax provision. Hence deferred tax provision cannot be reduced from book profit. Retrospective amendment.

Deductions under Chapter VI A

Amendments

- 80C - Expansion in scope of eligible investments to include investment in notified bonds issued by NABARD, Senior Citizen Savings Scheme and 5 years Time Deposit with Post Office.
- Increase in limit of 80D- mediclaim premium paid – Rs.20,000 if the insured is a senior citizen and Rs. 15,000 for others. Earlier deduction was allowable only if premium paid by cheque, amendment provides for deduction in respect of premium paid by any mode other than cash.
- Expansion of 80E to cover interest on loan obtained for higher education of spouse or children.

Miscellaneous Issues

- Notes to Computation of Income to substantiate claims where contrary opinions are possible.
- How to avoid 271(1)(c) - Letter can be submitted to the AO giving the basis of certain claims to avoid rigours of concealment as subsequent stages.

Conclusion

- Make proper enquiries to ensure completeness of information.
- Proper verification of data provided.
- Ensure that changes in law have been considered.
- Importance of preparing balance sheet & receipts and payments account for proper tracking and monitoring of assets, liabilities & incomes.

Thank You