

Computation of Tax

Particulars	Rs.
Tax on Rs. 6,30,000	38,500
Add: Health & Education Cess (4%)	1,540
Sub- Total	40,040
Less: TDS on Rent Income	20,000
TDS to be deducted as per Step 1	20,040

Step 2 : Computation of total income and tax payable considering loss under head house property and positive income under other heads of income

Computation of Total Income

Particulars	Rs.
Salary Income	9,81,000
Income under head house property	(2,01,000)
Income under the head PGBP (net)	20,000
Gross Total Income	8,00,000
Less: 80 C	1,50,000
Total Income	6,50,000

Computation of Tax

Particulars	Rs.
Tax on Rs. 6,50,000	42,500
Add: Health & Education Cess (4%)	1,700
Sub- Total	44,200
Less: TDS on Rent Income	20,000
Less: TDS on Consultancy Income	10,000
TDS to be deducted as per Step 2	14,200

Step 3: Tax to be deducted from the salary is Step 1 or Step 2 whichever is higher: Rs. 20,040

Reader's Note:

Practical 7

Hotelia Ltd., engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from the customers, by virtue of their employment. The tips were also collected directly by the hotel-company from the customers, when payment was made by them through credit cards. The hotel-company thereafter disbursed the tips to the employees. The Assessing Officer treated the receipt of the tips as income under the head "Salary" in the hands of the various employees and held that the company was liable to deduct tax at source from such payments under section 192.

Since the company had not deducted tax at source on such payments, the Assessing Officer treated the company as an assessee-in-default under section 201(1). Discuss the correctness of the action of the Assessing Officer.

Solution

- The issue under consideration is whether "tips" received by the hotel-company from its customers and distributed to the employees fell within the meaning of "Salaries" to attract tax deduction at source under section 192?

- This issue came up before the **Supreme Court in ITC Ltd. v. CIT (TDS) (2016) 384 ITR 14** wherein it was observed in respect of tips collected by the company from the customers and distributed to the employees, the person responsible for paying the employee was not the employer at all, but a third person, namely the customer. As income from tips would be chargeable in the hands of the employees as “Income from Other Sources”, on account of such tips being received from customers and not from the employer, section 192 would not get attracted at all. The Supreme Court further observed that there was no vested right in the employee to claim any amount of tip from his employer.
- Tips are purely voluntary amounts that may or may not be paid by customers for services rendered to them, and hence, would not fall within the meaning and scope of section 15. Further, the amount of tips collected from the customers by the employer and paid to the employees has no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee. Due to this reason the tips received by the employees could not be regarded as profits in lieu of salary in terms of section 17(3). The payments of collected tips included and paid by way of a credit card by a customer, would not be payments made “by or on behalf of” an employer. The contract of employment not being the proximate cause for the receipt of tips by the employee from a customer, such payments would be outside the scope of sections 15 and 17.
- Applying the rationale of the above Supreme Court ruling to the case on hand, the action of the Assessing Officer in treating Hotelia Ltd. as an assessee-in-default for non-deduction of tax at source on the amount of tips collected by it from the customers and distributed to its employees, is not correct.

Reader’s Note:

27.2 PAYMENT OF ACCUMULATED BALANCE DUE TO AN EMPLOYEE

Section:- 192A

(A) Person liable to deduct tax at source:- Tax is to be deducted by the trustees of Employees’ Provident Fund Scheme, 1952 or any other person authorized under the scheme to make payment of accumulated sum to employees.

(B) Which amount is subject to tax deduction

- Tax is deductible from accumulated lump sum payment when the employee has not rendered continuous service of 5 years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.).
- Out of the lump sum payment, tax deduction shall be made on that portion of payment which is includible in the total income of the employee. Thus, tax deduction shall be made as under:-

Component of lump sum payment	Is this component taxable in the hands of employee not completing continuous 5 years of service?	Is it subject to TDS if other conditions of section 192A are satisfied?
Employer’s Contribution	Taxable under head "Salary"	Subject to TDS
Interest on Employer’s Contribution	Taxable under head "Salary"	Subject to TDS
Employee’s Contribution	Not Taxable	No TDS required
Interest on Employee’s Contribution	Taxable under head "Other Sources"	Subject to TDS