SHOULD ALLOWANCES BE INCLUDED AS TAXABLE SALARY?

QUESTION: Pensioners are given dearness relief on a par with dearness allowance. Public sector banks like State Bank are classifying the reliefs as allowance for computing taxable income. Under what provision under the Income-tax Act or Rules dearness relief is taken into account for income-tax purposes?

ANSWER: Sec. 17 defining salary not only includes wages, annuity or pension or any gratuity, but also "any fees, commission, perquisites or profit in lieu of or in addition to any salary or wages", Perquisites are again widely defined to include various allowances. Explanation 3 to Sec. 17(2) would refer to dearness pay and dearness allowance. Value of any benefit or amenity is also to be included.

In fact, any amount received before or after employment, besides any amount received during employment from the employer, would be taxable as income from salary as specifically provided under Sec. 17(3)(iii) of the Act.

What are exempted are only those listed in Sec. 10(10) for gratuity, 10(10A) for commuted pension, 10(10AA) for terminal leave encashment, 10(10B) for compensation received by a workman under the Industrial Disputes Act, 10(10C) for amounts received under Voluntary Retirement Scheme, 10(10CC) for non-monetary perquisites on the value for which the employer at his option undertakes to bear the tax payable by the employees in respect of such perquisites, Sec. 10(11), 10(12) and 10(13) being payments from Government Provident Funds or recognised provident funds or approved superannuation funds, 10(13A) for rent allowance and 10(14) for expenses incurred for employer's business.

All these exemptions are, however, subject to the limits prescribed in the respective provisions or the rules.

The Supreme Court has endorsed the view that all allowances, other than those specifically exempt, are taxable and are also tax deductible expressed in Karamchari Union v Union of India (2000) 243 ITR 143 (SC).

Source: The Hindu

RESIDENTIAL STATUS OF AN INDIAN EMPLOYEE

I am working in an Indian IT company and getting salary in India. When I was sent to South Africa by my Indian employer, I was paid allowance by my Indian employer in South Africa through cash cards. The said allowance was taxed in South Africa. Can I take credit of the tax paid by me in South Africa as the allowance paid by my employer in South Africa is taxable in India also? —

From what is stated by you, it appears that you would only be a resident of India in accordance with Article 4 of the Double Taxation Avoidance Agreement between India and South Africa.

This being so, if any income is doubly taxed that is, both in South Africa and India, you can claim credit in the country of residence, that is India, in respect of the tax paid in South Africa on such doubly taxed income but not exceeding the tax payable in India on such income.

This is provided for in Article 22 of the Double Taxation Avoidance Agreement between India and South Africa.

Mr X is a person of Indian origin and he was in the US from April 1, 2009 to December 31,2009, on employment. His employer is a US-based company for which he was deployed for work in the US and he came back to India in January 2010. His status was resident and ordinarily resident up to the financial year 2008-09. He was also a Managing Partner in a partnership firm in India and he received salary and profit from the firm for the financial year April 1, 2009 to March 31, 2010. Further, he has two houses in India which was let out in the financial year 2009-10.

Is he a resident as per the Income Tax Act for the financial year 2009-10? If yes what is the treatment of the salary income received by him in the US? Will he be able to get credit on the income tax paid by him in the US? If yes, how, and if not why?

If he is a non-resident under Section 6, then the income earned by him in the US will not be taxable in India and he has to pay tax only on the salary income from the partnership firm and the rental income from house property. Is this understanding correct?

Residential status of an individual under section 6 of the Income Tax Act is to be determined as follows:

An individual is resident in India if he satisfies any one of the following conditions:

He is in India for 182 days or more in the previous year.

He is in India for 60 days (182 days if he leaves India to take up employment outside India if he is a citizen of India or being outside India comes to India on visit if he is a citizen of India or a person of Indian origin) or more in the previous year and for 365 days or more in the four years preceding the previous year.

He is resident but not ordinarily resident if he satisfies any of the following conditions:

He is non resident in nine out of the 10 years preceding the previous year;

He is in India for 729 days or less in the 7 years preceding the previous year.

If an individual is resident but is not resident but not ordinarily resident then he would be resident and ordinarily resident. An individual who is not a resident would be a non-resident.

Up to the financial year 2008-09, the individual in the present case was a resident and ordinarily resident. In the financial year 2009-10, since he has not been in India for a period exceeding 182 days and having gone to take up employment outside India, he would be a non- resident for that year.

Consequently, the income earned by way of salary outside India will not be chargeable to tax in India. If his only other incomes chargeable to tax in India are remuneration from the firm and rental income from the house property only these incomes will be taxable in India in the financial year 2009-10, that is in assessment year 2010-11.

You may, however, note that for the period when the individual was outside of India, it may be difficult to claim salary as a deduction in the hands of the firm unless it can be demonstrated that the individual worked for the benefit of the firm in the US. Consequently, where such remuneration is not allowed in the hands of the firm, the same will not be taxable in the hands of the individual. You may also note that the share of profit from the firm is exempt under Section 10(2A).

You may further note that since the salary income is not taxable in India but only in the US there can be no claim for credit in India in respect of the tax paid on such salary in the US

I was deputed to the US by my employer in June 2010. From June I got two components in my salary — one being my Indian salary and the other being an allowance in the US. My Indian salary was converted into dollars and was credited to my account in the US.

No tax was deducted at source on my Indian salary from June. However tax was deducted on the Indian salary in the US.

I have come back to India in December 2010 after seven months. What would be my tax implications? Do I need to pay tax in India again on the salary received by me in the US? Will I get any credit for the taxes deducted in the US on my salary?

Section 6 of the Income-Tax Act provides for determining the residential status in the following manner:

An individual is resident in India if he satisfies any one of the following conditions: He is in India for 182 days or more in the previous year; He is in India for 60 days (182 days if he leaves India to take up employment outside India if he is a citizen of India or being outside India comes to India on visit if he is a citizen of India or a person of Indian origin) or more in the previous year and for 365 days or more in the four years preceding the previous year.

He is resident but not ordinarily resident if he satisfies any of the following conditions: He is non resident in 9 out of the 10 years preceding the previous year; or he is in India for 729 days or less in the 7 years preceding the previous year

If an individual is resident but is not resident but not ordinarily resident, then he would be resident and ordinarily resident. An individual who is not a resident would be a non-resident.

You will, therefore, have to first examine your residential status on this basis.

In your case it appears that you have not gone out of India for the purpose of employment but only in connection with your employment — on a tour.

This being so, as you have been in India for a period exceeding 60 days in the previous year and going on the premise that you have been in India for a period exceeding 365 days in the four years preceding the previous year, your income earned in US will also be taxable in India.

You may, however, claim credit in India for the tax paid in the US in accordance with Article 25 of the double taxation avoidance agreement between India and the US.

Source: The Business Line