

TAXATION TIMES

June 2019

Thought about how much of your salary you're spending on taxes this year, yet?

Well, the tax season is around the corner and every individual is required to file their return by 31st of July. It's all fun and good all year round until you come to this point of paying the actual taxes. In the wake of this, everyone is in the process of filing their returns or collecting information for the same.

So, how can a salaried employee file their return? What are the documents and details they will need to file the same?

Let us get to the very basis of it and go through the entire process made much simpler for the salaried individuals.

1. **Form 16** : Form 16 is the total salary received by the employee from the employer during the previous financial year. This form is divided in two parts, Part A & Part B. PART A highlights the total income earned from the employer and the TDS thereon. PART B details the exemptions claimed, allowances, deductions and taxes deducted.

It is provided by the employer to each employee on or before 15th June of the next year, immediately after the financial year in which the tax is deducted. Recently the CBDT had come up with a more detailed disclosure of information (detailed breakup of salary, allowances, exemptions and deductions) effective AY 2019 – 2020 onwards. One needs to pay due care to these points while filing their return this year. During the earlier Assessment Year's, only PART A would be generated online. From AY

2019 – 2020 onwards, the CBDT has mandated even PART B to be generated online.

Incase, during the assessment year, salary has been earned from two employers, two Form 16's shall be received and income from both the employer's shall be disclosed in the return of income under the head "salaries".

2. **Form 26 AS** : This form contains the information of all your taxes deducted during a particular financial year. Tax could have been deducted in various forms. For e.g.: commission, interest, etc. It also displays the taxes collected at source during the year. Any other taxes already deposited to the Revenue in the form of advance tax or self-assessment tax is present in this form. To sum it up we could say that it is a form displaying the taxes already paid to the revenue of which credit can be claimed. Other than that, refunds of the previous years which has been received are also mentioned therein. It is of absolute importance to make sure that the return of income adequately is in line with 26AS.

How do you obtain the form 26AS?

To do this one has to login to the Income Tax Website with a Valid PAN. Click on my account --- View form 26 AS. This will automatically be directed to the Traces website. Select the relevant assessment year to view the

Form 26AS in HTML/PDF or excel.

3. **Chapter VIA deductions** : Various deductions under Chapter VIA can be claimed. These include – payment to PPF, LIC premium payments, medical insurance premium paid etc. Details of these deductions can be furnished to the employer which will also be included in Form 16, PART B. However, if details of deductions are not furnished to the employer, these can be claimed in the return of income. These deductions ultimately help reduce the tax burden. All the proofs in relation to the deductions claimed should be maintained.
4. **Other Details:** At the time of filing of return of income, various other details like, Bank account details, PAN number, TDS certificates, Certificate of home loan interest and other such documents should be kept in hand.

Recently the CBDT has also made it mandatory for the bank details entered in the ITR to be linked with the respective PAN numbers. This is required if you have any refund to be credited. An additional reporting is also made mandatory by the CBDT from AY 2019-20 onwards which requires a detailed disclosure of income from various heads of income, details relating to foreign assets, foreign bank accounts (if any), turnover reported for GST, Details of Assets and Liabilities at the end of the year (Applicable if income exceeds INR 50 lacs during the Assessment year) & pass through income (if any).

So hurry up, collect your information and get in line to welcome the season. Happy e-filing, everyone!



Form 16

PART A highlights total income earned and TDS deducted thereon. PART B details the breakup of salary received, deductions / exemptions claimed and TDS deducted.

Form 26AS

Disclosed income under various heads and TDS deducted thereon. Also details of advance tax and self assessment tax mentioned.

Chapter VIA Deduction

Tax Saving deductions – eg. LIC, PPF, Principal housing loan repayment etc.

Other Details

While filing of income tax returns, bank details, assets and liabilities schedule need to be filled in.



Recent Case Laws

“ In a recent decision, the Hon'ble Cochin ITAT has held that an amount received or receivable can be brought to tax, depending upon the system of accounting adopted by the taxpayer. ”

Case Walkthrough

- The taxpayer¹ is engaged in the business of software. The taxpayer entered into a Business Co-operative Agreement 'BCA' dtd. 31st December 1999 effective from 01st January 2000 with IBS Software Services. As per the BCA, the current business, the staff and software development facility were handed over to IBS Software Services. As per the terms of the BCA, the taxpayer had agreed not to carry on similar business and was compensated for discontinuance of business. The BCA stipulated that compensation would be paid to the taxpayer in installments. Since, the taxpayer was following mercantile system of accounting, the entire compensation was credited to the capital reserve in the year of signing the agreement i.e. AY 2000 – 2001. Also, the payer i.e IBS Software Services capitalized the compensation in the said year itself as an intangible asset and depreciation was claimed on the same.

- The Ld. AO adjusted and added to the total income of the taxpayer the compensation received during the relevant AY i.e AY 2003 – 2004. Aggrieved by the addition, the taxpayer preferred an appeal before the Hon'ble CIT(A). The CIT(A) upheld the decision of the AO and rejected the claim of the taxpayer. Hence, an appeal before the Hon'ble Tribunal.

Matter before the Authorities

- Is the AO justified in treating the compensation received as taxable in the year of receipt i.e AY 2003 – 2004 under s. 28(va) of the Income Tax Act 1961 (hereinafter referred to as 'IT Act') in view that the taxpayer follows mercantile system of accounting and that the taxpayer has credited to it's capital reserve the entire amount of compensation at the time of entering into the agreement itself.

Arguments

- The Ld. AO invoked s. 28(va) of the IT Act. Relying on the said section, the AO held that since the two conditions i.e *the amount is receivable as per the terms of the agreement and the payment is for not carrying on any activity in relation to business* is satisfied and hence, the compensation received during the year is to be brought to tax as business income. The Ld. CIT(A) held that the contention that the entire amount of non-compete



¹ IBS Software Private Ltd V/s ACIT (ITA No. 102/Coch/2013 : AY 2003-2004)

fees has accrued on the date of entering into the agreement itself is not justified since the same is being received in monthly instalments. The Ld. Council for the Department supported the orders of the Income Tax Authorities.

- The Ld. Council for the taxpayer has confined its submission only to the ground that the compensation has accrued on signing of the BCA agreement and the same cannot be brought to tax on receipt basis under s. 28(va) of the Act.

Decision

- The taxpayer is following mercantile system of accounting and this fact is apparent from the Assessment Order. However, in order to ascertain if the income has accrued in AY 2000-2001 or AY 2003 -2004, the clauses of the BCA have to be referred to. The compensation for discontinuance of similar business would be paid in 36 monthly installments commencing 1st January 2000. The BCA was entered into on 31st December 1999 and effective 1st January 2000.
- Accordingly, on the basis of the BCA agreement, it is evident that the compensation though paid in installments had accrued when the agreement was entered into and was effective 1st January 2000. Also, due to these facts, the taxpayer has credited the full amount to the capital reserve. Further, the compensation paid by the payer i.e IBS Software Services was capitalized in its books as an intangible asset and depreciation was claimed on the same.
- Reliance was placed on the decision of the Apex Court² wherein it was decided that income can be set to accrue when it became due. The date of payment does not affect the accrual of income and the moment the income accrues the assessee gets vested with the right to claim the amount even though it may not be immediately. Thus, the entire amount receivable against the BCA has accrued on

execution of the agreement and taxing the same on receipt basis was not justified. The Karnataka High Court³ has also upheld that in case of payment of lumpsum consideration, liability to pay the entire consideration had arisen on the date of agreement though the payment was deferred over a period of time.

- Also, the AO relied on s. 28(va) of the Act, which was inserted by Finance Act 2002, w.e.f 1st April 2003 and the said provision was applicable from AY 2003-2004. Thus, for the taxpayer, the amount received would have been a capital receipt and not taxable. Further, it also needs to be ascertained if there is a deeming fiction in s. 28(va). S. 28(va) does not speak of a deeming fiction whereby the amount received can be brought to tax on receipt basis. On the contrary, amount received or receivable can be brought to tax on the basis of the system of accounting adopted by the taxpayer. In the instant case, the taxpayer has adopted the mercantile system of accounting and hence, the income has accrued in AY 2000-2001 and the same cannot be brought to tax in the current AY.

Case Wrap – Up

- The said judgment in favour of the taxpayer reinforces that in case of mercantile system of accounting followed by the taxpayer, income can be said to be accrued only on execution of the agreement. The time of receipt of income is of no relevance since the right to claim the amount gets vested with the taxpayer immediately on accrual date.

² The Morvi Industries Pvt Ltd V/s CIT (82 ITR 835)(SC) and CIT V/s Excel Industries Ltd. (358 ITR 295)(SC)
³ CIT V/s Amco Power Systems Ltd (379 ITR 375)(Kar)

“ In the recent decision, the Hon'ble Delhi ITAT held that provisions of s. 14A shall not be invoked where the assessee has received the shares are purchased for the purpose of trading and the taxpayer received dividend on those shares. ”

Case Walkthrough

- The taxpayer⁴ was engaged in the business of trading of shares and units of mutual fund. The shares were invested as stock in trade and the primary objective of investing in shares by the assessee company was to sell them at profit. During the year, the taxpayer earned dividend on these shares. The dividend income earned by the taxpayer was only incidentally earned by the taxpayer and interest paid by the taxpayer had no correlation with the dividend income earned by it.
- The Ld. Assessing Officer (“AO”) invoking provisions of s. 14A of the Income Tax Act (‘the Act’) r.w.r. 8D computed disallowance and added the same back to the total income of the taxpayer. On a second appeal, the Ld. CIT(A) upheld the decision of the AO. The taxpayer has now preferred an appeal against the order of the Ld. CIT(A) before the Tribunal.

Matter before the ITAT

- Is the disallowance under s. 14A of the Act justified in view that the shares and units of mutual fund are held by the taxpayer as stock-in-trade and not for the purpose of investment?

Arguments

- The taxpayer submitted that it was engaged in trading of shares and these shares never intended to be held as investment. The taxpayer has shown the share as part of stock in trade and the primary objective of investing in shares was to sell them at profit on inflated price. It is only

a quirk of fate that the investee company has declared dividend and is received by assessee company. The taxpayer relied on the decision of Vora Financial Services (P) Ltd⁵. wherein it was held that where a major portion of dividend income has been received as shares held as stock-in-trade, it cannot be appropriately to apply the provisions of Rule 8D. Reliance was also placed on the decision of Leena Ramachandran⁶ wherein, the Hon'ble Kerala High Court has held that the taxpayer is eligible to claim deduction under s. 36(1)(iii) of the Act on funds borrowed for the acquisition of shares where shares were held as stock-in-trade which arise if the taxpayer is engaged in the trading of shares.

- The Ld. Council on behalf of the revenue has relied on the orders of the income tax authorities. The Assessing Officer in its argument claimed that one cannot claim that investment in shares is made only for earning dividend income or income by way of appreciation in value of each share. These income are integral part of financial transactions and are inseparable. The expense incurred by way of interest cannot be segregated as interest on account of investment and interest on account of purchase of shares. The expense incurred by way of interest is directly linked with exempt income i.e. dividend income and therefore interest expense incurred in relation to exempt income should be disallowed.

Decision

- The ITAT in its decision held that there is no doubt that the assessee company has invested in shares with the intention to earn profit by selling the shares at higher

⁴ Nice Bombay Transport (P) Ltd V/s ACIT, New Delhi (2019) 103 taxmann.com 338 (Delhi – Trib)

⁵ Vora Financial Services (P) Ltd. V/s ACIT (2018) 96 taxmann.com 88/171 ITD 646 (Mum – Trib)

⁶ CIT V/s Leena Ramachandran (2011) 10 taxmann.com 109/199 Taxman 122/339 ITR 296 (Ker)

price. Merely because the dividend is earned when the shares were held during the business activity of the assessee, it cannot be concluded that the assessee has the objective of earning exempt income so as to invoke the provisions of section 14A of the income tax act 1961.

- Reliance was placed on decision of Hon'ble Apex Court⁷ wherein it was held that distinction must be made between the dividend earned in respect of shares which were acquired by assessee to acquire and retain the controlling interest and the shares that were purchased for purpose of liquidating those shares whenever the share price goes up, in order to earn profits. It is therefore clear that shares held as stock in trade stand on a different pedestal in relation to the shares that were acquired with the intention to acquire and retain the controlling interest in the investee company. The purpose of investing in shares is relevant for the purpose of invoking the provisions of s. 14A of the Act.

Case Wrap – Up

- The provisions of s. 14A were intended to disallow expense incurred in relation to exempt income since it is quite logical to disallow expenses that are incurred to

earn exempt income. The provisions are drafted with the motive that when the income is not offered to tax due to applicability of relevant provisions of the income tax act, the expense incurred on earning exempt income should not be allowed to reduce from profit earned by the assessee.

- Facts that should be taken into consideration as to whether shares are purchased for acquiring the controlling interest or for the purpose of trading and earning profit on inflated share price. Disallowing expense incurred when the shares are held as stock in trade will defeat the very purpose of s. 14A, r.w.r 8D of the Act. Incidentally where the dividend income is earned when the shares are held as stock in trade, does not give reason to invoke the provisions of section 14A, thereby disallowing interest expense incurred on loan for purchase of shares.

⁷ Maxopp Investment Ltd. V/s CIT (2018) 91 taxmann.com 154/254 Taxman 325/420 ITR 640(SC)





Upcoming compliances for June 2019

7th
June 2019

Due date for deposit of Tax deducted/collected for the month of May, 2019. However, all sum

deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14th
June 2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of April, 2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of April, 2019

15th
June 2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2019 has been paid without the production of a challan

- Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2019
- First instalment of advance tax for the AY 2020-21
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2018-19
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of May, 2019

30th
June 2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of May, 2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of May, 2019
- Return in respect of securities transaction tax for the financial year 2018-19
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2019
- Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2018-19
- Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2019
- Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2018-19. This statement is required to be furnished to the unit holders in form No. 64B



Notifications & Circulars

Procedure, format and standards for issuance of certificate for TDS in PART B of Form No. 16 through TRACES

The Principal Director General of Income – tax (Systems) vide notification No. NN 9/2019 specifies the procedure, formats and standards for the purposes of generation and download of certificates from TRACES Portal.

 https://www.incometaxindia.gov.in/communications/notification/notification_09_2019.pdf

Inter-Governmental Agreement for Exchange of Country-by-Country Reports

In exercise of powers conferred by s. 286 of the Income – Tax Act, the Central Government has notified vide Notification NN. 37/2019 the Inter-Governmental Agreement, and all the provision of the said Agreement shall be given effect to in the Union of India in accordance with paragraph (1) of Article 5 of the Agreement.

 https://www.incometaxindia.gov.in/communications/notification/notification_37_2019.pdf

Order under s. 119 of the Income Tax Act, 1961

Earlier the reporting under clause 30C - GAAR and clause 44 - GST Compliance of the Tax Audit Report was deferred till 31st March, 2019 vide circular no. 6/2018. Now as per new circular no. 9/2019 the above reporting has been further deferred till 31st March, 2020.

 https://www.incometaxindia.gov.in/communications/circular/circular_9_2019.pdf

Order under s. 119 of the Income Tax Act 1961

The CBDT extends the due date for the filing of TDS returns for the state of Odisha.

 https://www.incometaxindia.gov.in/news/odisha_extension_due_date_tds_misccomm_24_5_19.pdf

Modification in Form 15H

The CBDT vide Notification No. 41/2019/F dtd. 22nd May 2019 has held that Form 15H can be furnished if no tax payable on income after s. 87A rebate.

 https://www.incometaxindia.gov.in/news/notification41_2019.pdf