



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (Western India Regional Council)

## TAXATION OF SALARIES

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# CHARGING PROVISIONS - AN OVERVIEW

- Section 15 - Charging Provision
- Salary earned by an "employee" from an "employer" i.e. "Employer-Employee" relationship essential.
- Taxation on "due" or "receipt" basis - whichever is earlier.
- Salary paid/allowed by non-employer - "on behalf of" the employer - covered
- Payments from "former employer" also covered
- Label - not conclusive
  - CIT V. T. Abdul Wahid & Co. 243 ITR 467 (Mad.) [Commissioner to employees, also treated as "salary"].

# “EMPLOYER - EMPLOYEE” RELATIONSHIP

➤ Lakshminarayan Ram Gopal & Sons V. Govt. of Hyderabad (1954) 25 ITR 449 (SC)

- What to do + How to do

- Direct Control and supervision

➤ Q: Present day – How far applicable

➤ Klaus Vogel:-

- Employer has right to the work performed

- Employer bears the relative risks & responsibilities.

[CIT V. Coastal Power Co. (162 Taxman 120)(Del)]

# Contd.....

- Substance prevails over form
- Some Indicators – none conclusive
  - Your instructions (what + how + when) to be followed?
  - You provide training?
  - You set working hours / leave rules?
  - Is there a continuing relationship?
  - Do you appoint / supervise any assistants of the worker?
  - You specify the location of work?
  - You require progress report?
  - You provide infrastructure, tools, equipment?
  - Restrictions on providing services to others?
  - You have a right to terminate?
  - Requirement to pay on time basis even if job not accomplished?

# OFFICE OR PLACE OF PROFIT

## ➤ Stya Paul V. CIT (116 ITR 335) (Cal.)

- Mere some supervisory control by the board not conclusive
- The M.D. had powers to appoint an additional director to dismiss him
- Hence, the M.D. is not a servant of the company.

## ➤ CIT V. Manmohan Das (59 ITR 699) (SC)

- Treasurer of a Bank – contract for service, not “salary”
- Treasurer to provide staff, appoint/remove them
- He was responsible for protection of cash/ bad money/ base money/ forged currency.

## Contd.....

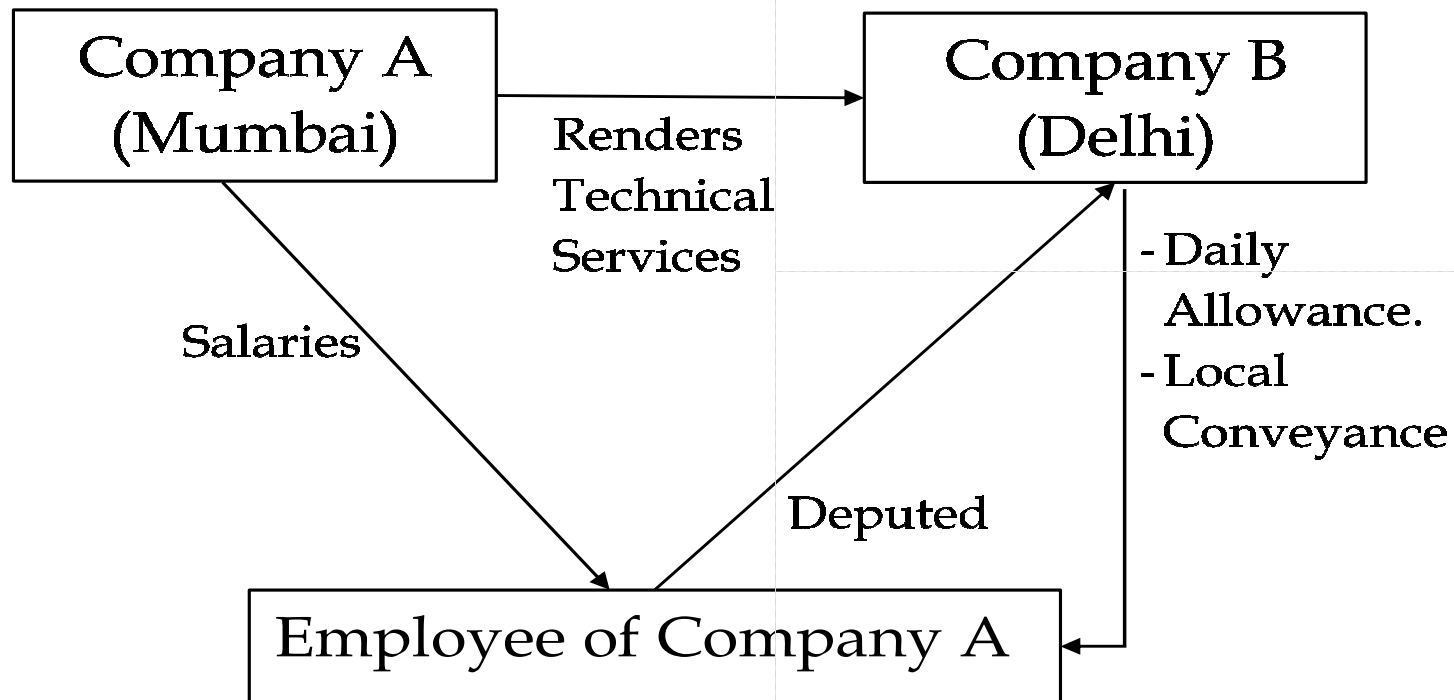
### ➤ Ram Prashad V. CIT (86 ITR 122) (SC)

- M.D. employed to manage affairs of the company, he could be dismissed, or his employment could be terminated if work not satisfactory – is an indication of control & supervision of the Board. Hence “Employee”.
- Day to day supervision/ control not required.

# SALARY PAID "ON BEHALF OF" EMPLOYER

## Case Study I:

### ➤ Situation 1



## ➤ Situation 2

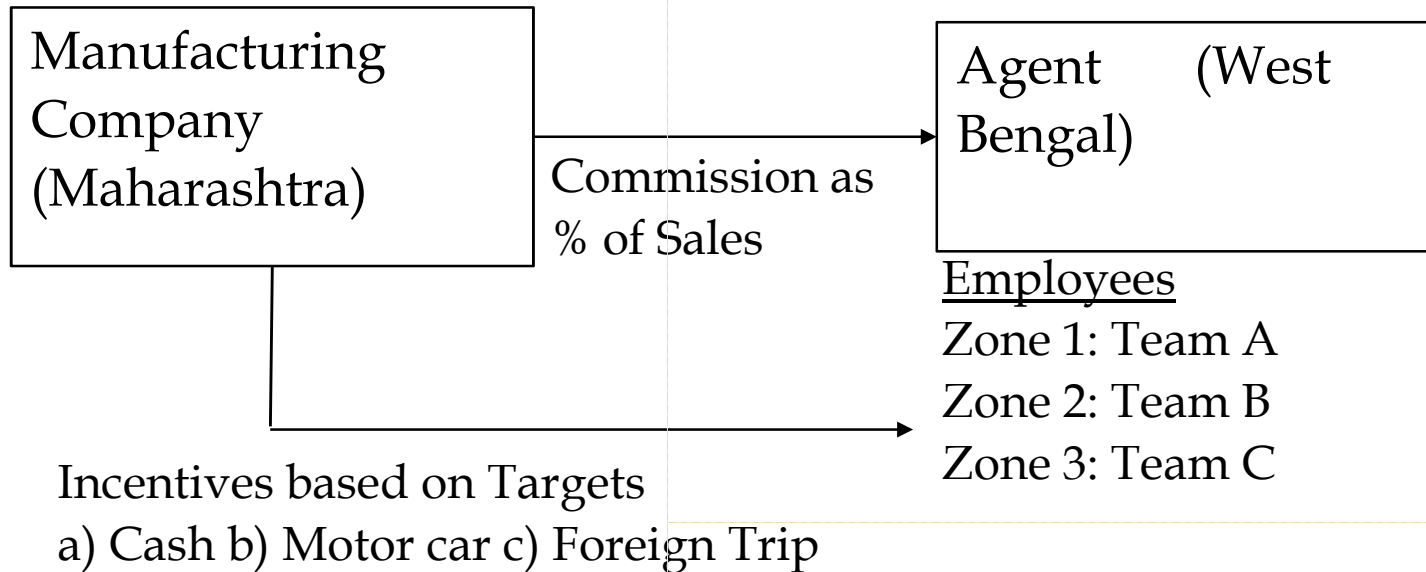
- Company B provides rent free accommodation to the Employee
- Whether taxable as perquisite
- Who should do TDS ? Company A or Company B ?

## ➤ Situation 3

- Assume Company A has provided house in Mumbai where the Employee's family continues to live while he is in Delhi
- Would perquisite value of Delhi house be taxed as perquisite ?



## CASE STUDY II



Q: Are these payments in the nature of additional commission to the Agent ?

Q: Are these payments liable to tax as “Salaries” in the hands of Employees ?

Q: If Salary – Who does TDS ?

# RENT FREE ACCOMODATION

- Flat provided by employer to 3 employees – bachelor's accommodation on sharing basis. How to work out perquisite value ?
    - When flat is on rent (say Rs. 30,000/-) per month; and
    - When flat is owned by the Employer
  - Interest free deposit given to the landlord by the employe
    - Where flat is taken on rent by the employer
    - Where flat is taken on rent by the employee
- [CIT v. Vijay Singh 323 ITR 446(Del);CIT v. Shankar Krishnan 207 taxman 233(Bom)]

## RENT FREE ACCOMODATION (cont'd)

- Meaning of “salary” for computation of housing perquisite value:
  - Excludes perquisites specified u/s. 17(2);
  - Q: whether tax paid by employer on behalf of employee is to be included?
  - Held: No. Tax is the obligation of the employer. Hence perquisite u/s. 17(2)(iv)

# Conveyance Allowance

- Conveyance Allowance paid : Rs 800 per month

Plus

- Bus facility provided by its employer

- From & to Home & Office

- From & to nearest railway station & office

[Transworks Info Services v. ITO 29 SOT 543(Mum); WNS Global Services v. ITO 33 SOT 445 (Mum)]

# Meal coupons

- S. 17(2)(viii) r.w.r. 3(7)(iii)
  - No perquisite for “free food and non-alcoholic beverages provided by the employer”:
    - During working hours at office or business premises; or
    - Through paid vouchers which are:
      - Not transferable;
      - Usable only at eating joints
- [ ≤ Rs. 50 per meal (in either case)]; or
- Tea or snacks provided during working hours

# Keyman Insurance Policy

- Keyman Insurance Policy (KIP) – definition 10(10D) –
  - Life insurance policy
  - Taken by a person on the life of another (generally employee)
- General planning used so far:
  - Employer pays premia; claims deductions u/s. 37;
  - premia not taxable in the hands of the employee because assured is the Employer – S. 17 (2)(v) NA;
  - employer assigns the policy to the employee; employee pays balance premia when moneys received on maturity, claimed exempt by the employee as it is to be a KIP and S. 17(3)(ii) NA.
  - CIT v. Rajan Nanda 18 taxmann.com 98 (Del) – supports this view
- FA 2013 – amendment – Definition of KIP amended to include such policy even post assignment
- Q. S. 37 – “expenditure” irretrievably gone?

# TDS on Salaries – some important aspects

- CIT v. L&T 313 ITR 1 (SC)
  - S. 10(5) – LTC
  - Employer – grants exemption based on self declaration of employee
  - Employer – whether bound to obtain supporting evidences
  - Held – No. – observations that even circular does not require the employer to obtain evidences
- Circular 8 / 2013 dt. 10.10.13 – marked difference
  - Employer should satisfy themselves about actual deposit / subscriptions / payments by employee

# TDS on Salaries (cont'd)

- Can employer grant deduction u/s. 80G?
  - Circulars u/s. 192 till 2012 – clear embargo
  - Circular no. 8/2013 dt. 10.10.13 – silent
  - Interpretation?
    - S. 192 – average rate of tax – on estimated income u/h “salaries”
  - Due diligence by employer.



# Expatriate Taxation – an overview

- Determine whether “R” or “NR” [S. 6]
- If “R” world income taxable. Salaries received abroad for services rendered abroad in the year of “residence” also taxable u/s.5
- If “NR”- salary for services rendered in India taxable – whether or not received in India – S. 9
- Short stay exemption to employee of FC u/s. 10(6)(vi)
  - Stay < 90 days
  - FC – no business in India
  - Salary not liable to deduction from income of the FC in India

# Expatriate Taxation – an overview (cont'd)

- Position under the DTAA – generally (subject to examination of specific treaty)
  - Salary taxed in the country of residence - “R”
  - Salary also taxed in the country of source - “S”
  - “S” gives short stay exemption if:
    - Stay < 180 days;
    - Salary not borne by IC
    - Salary not borne by a PE of FC in India
  - Place of receipt of salary not relevant

THANK YOU