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INCOME TAX

a. Tax Deducted At Source

Change in provisions related to disallowance of expenditure on account of non-compliance with TDS provisions: Budget 2010-11

A) Relaxation in provisions relating to disallowance of expenditure where tax is not deducted or deducted but not deposited – Section 40(a) (ia).

Presently, in respect of any interest, commission, brokerage, rent, royalty, fees for professional services or fees for technical services etc., if an assessee does not deduct tax at source or after deducting does not pay the tax so deducted within the stipulated time, the relevant expenditure is disallowed under section 40(a)(ia). The stipulated time limit for the purpose of calculation of disallowance is March 31 of the previous year in cases where tax is deductible during the months of April to February in a given previous year and it is the due date of filing the return of income in cases where tax is deductible in the month of March.

The section is now amended to provide that the stipulated time limit for the relevant expenditure to be allowable shall be the due date of filing the return of income irrespective of the month in which the tax was deductible during the relevant previous year.

It is further provided that if tax is deducted and paid in any subsequent year or if it has been deducted in the previous year but is paid in any subsequent year after the due date of filing return of income, then the deduction for the relevant expenditure shall be granted in such subsequent year of payment.

The above amendments are introduced with effect from A.Y. 2010-11.

This is a very welcome provision. Hence now onwards, the disallowances under section 40(a)(ia) will fall in line with section 43B and hence any expenditure as referred above will be allowed as deduction from the total income if the TDS applicable on the same is paid on or before the due date of filing the Income Tax Return as specified under section 139(1).

B) **Interest Liability for failure to deduct tax or failure to pay after deduction of tax –Section 201 (1A)**

Presently, any person who is liable to deduct tax fails to deduct whole or any part of tax or after deducting fails to pay tax to the government is liable to pay simple interest at 1% for every month or part of a month under section 201(1A)

The section is now amended to provide that, where any person fails to pay or delays the payment of the tax deducted at source, the rate at which he is liable to pay interest is increased to 1.5% from the existing 1% for every month or part of a month. Interest is payable from the date of deduction of tax to the date of payment to the government.

In other cases, i.e. the cases where the Assessee Company has failed to deduct the tax at source, which otherwise they were required to do so, the interest is payable at 1% for every month or part of a month from the date on which tax was deductible to the date of deduction of such tax.

This amendment is effective from 1st July, 2010.

Compiled by: Trilochana Thakkar

b. **Provident Fund**

Even Employees' Contribution To Provident Fund Paid Before Due Date Of Filing Return Of Income Is Allowable U/S 43b

SOURCE

Case Law: **Commissioner of Income Tax V AIMIL Limited,**
Appeal No.: **ITA No. 1063/2008**,
Decided By: **High Court of Delhi,**
Pronounced on: **December 23, 2009**

GENERAL PROVISION

- Section 2 (24) (x) provides that amounts received by assessee from employees towards PF contributions etc shall be "income".
- Section 36 (1) (va) provides that if such sums are contributed to employees account in relevant fund on or before *due date* specified in PF etc legislation, assessee shall be entitled to deduction.
- Second Proviso to section 43B (b) provided that any sum paid by assessee *as employer* by way of contribution to any provident etc fund shall be allowed as deduction only if paid on or before *due date specified in 36(1)(va)*.
- After omission of second Proviso w.e.f 1.4.2004, deduction is allowable under first Proviso if payment is made on or before *due date for furnishing return of income*.

QUESTION BEFORE COURT OF LAW

Whether benefit of section 43B can be extended to *employees' contribution* as well which are paid after due date under PF law but before due date for filing return?

HELD BY COURT OF LAW

HELD deciding in favour of assessee:

i. **Argument by Revenue**

   - Distinction is to be made between "employers' contribution" and "employees' contribution"

- Employees' contribution being in nature of trust money in hands of assessee cannot be allowed as deduction if not paid on or before due date specified in PF etc
- Income Tax Act treats that employees' contribution is as income u/s 2 (24) (x) on receipt by assessee and allowed as deduction u/s 36 (1) (va) on making deposit with concerned authorities.

- Section 43B (b) stipulates that such deduction would be permissible only on actual payment;

ii. **Argument by Assessee**

- **When actual payment should be made** was question before court which was answered by **Vinay Cements 213 CTR 268.**

- **In this case it was held that** deletion of second Proviso to section 43B w.e.f 1.4.2004 was applicable to earlier years as well.

- As deletion of 2nd Proviso is retrospective, case has to be governed by first Proviso i.e. deduction is allowable if payment is made on or before *due date for furnishing return of income*.

- Same was followed in **Dharmendra Sharma** 297 ITR 320 (Del) & **P.M. Electronics 313 ITR 161 (Delhi)**

iii. **Provisions under Provident Fund Act**

- If employees' contribution is not deposited by due date prescribed under relevant Acts and is deposited late, employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in Provident Fund Act as well as ESI Act.

- Therefore, Act permits employer to make deposit with some delays, subject to aforesaid consequences.

Conclusion: Thus as Income-tax Act is concerned, assessee can get benefit if actual payment is made before return is filed, as per principle laid down in Vinay Cement.

Complied by: Yogendra Jain

GENERAL INFORMATION

Key points to keep in mind while investing in Company fixed deposits
Courtesy – Taxguru

As much as 55% of Indian savings find their way to bank fixed deposits. Over the past few years, fixed deposit interest rates from nationalized banks have gone down from 8-9% to around 6-6.5% now for a period of 1-3 years.

With fixed deposit rates from banks coming down, investors are now seeking higher returns from fixed income products and hence opting for investment in company fixed deposits.

Company fixed deposits work for investors seeking assured returns higher than that offered by bank fixed deposits.

Here are some key points you need to keep in mind while investing in company fixed deposits.

Security

Company fixed deposits are unsecured. In case of bank fixed deposits, the Deposit Insurance and Credit Guarantee Corporation of India guarantees repayment of Rs 1 lakh in case of default. There is no such guarantee offered in company deposits and the safety of your deposit depends on the financial position of the company.

This means, as a depositor, you have no lien on any asset of the company, in case it goes into financial difficulties and is wound up. Your turn to get your money back would come only when secured lenders have been paid. So do not invest in unknown companies.

Risk v/s return

Today, investors could expect around 5-8% from income funds, depending upon whether it's an ultra liquid fund or a long-dated income fund. Schemes like the post office NSC and PPF give you an 8% return, but are locked in for 6 years and 15 years, respectively.

A corporate like Tata Motors or Mahindra & Mahindra would offer you an interest rate of 8-8.5% while smaller companies like Avon Corporation or Ind Swift offer you an interest of 11-12% for a year. It's a simple investment philosophy. **"You trade return for risk".**

Definitely, the risk involved while investing in smaller companies is higher. Unless you need income regularly, you should prefer cumulative schemes to regular income options since the interest earned automatically gets reinvested at the same coupon rate, resulting in better yields.

Check parentage and financial

You can check with distributors or with friends about the credentials of the promoters and their past track record. Opt for companies that pay dividends and are profit making. Avoid loss-making companies or those who do not pay dividends. If a company has made a one-off exceptional loss in a particular year, but has a good parentage and past track record, you could consider it.

Also, it is important to check the servicing standards of the company. How quick are they in dispatching interest warrants and principal amount is something you should know. However, if the company is relatively new, or has been making losses continuously and its promoters are relatively unknown, then it would be better to avoid it.

Ratings are important

For NBFCs, RBI has made it mandatory to have an ‘A’ rating to be eligible to accept public deposits. Investors should go only for AAA or AA-rated schemes. Go for shorter tenures such as 1-3 years. This way, you can keep a watch on the company’s rating and servicing, and also have your money back in case of an emergency. Watch out for any adverse news on the company you have invested in and take necessary action if need be.

Liquidity

Most companies accept fixed deposits for a period ranging from 1-5 years. Compared to mutual funds or bank fixed deposits, company fixed deposits are rather illiquid. In most cases, premature withdrawal is not allowed before completion of three months. If you wish to withdraw between the third and the sixth month, you get zero interest income.

If you wish to withdraw between the sixth and the 12th month, you get 3% less than the guaranteed return. Also, for those staying in non-metros, in case the company’s banker does not have an account in their respective city, they would have to get a demand draft (DD) issued at a location where the company head office is located.

Similarly, when the company pays back the principal amount, the cheque may take time to clear. FDs are not listed and non-transferable. Interest income from fixed deposits is taxable. So if you are in the highest tax bracket, weigh your options accordingly. If there is a probability, you may need the money before a year, it is beset not to park it in company fixed deposits.

Do not put all eggs in one basket

“Depending on an investor’s risk profile, s/he could consider putting 5-15% of his or her investments in company fixed deposits,” says Anup Bhaiya, MD of Money Honey Financial Services. So if you have Rs 10 lakh to invest, it would then be worthwhile putting around Rs 1 lakh in company deposits for the extra Rs 3,000 per annum.

However, if you have a mere Rs 10,000 to invest, it may not make sense to invest it in company fixed deposits for the extra Rs 300, especially when your next door bank offers you more convenience and flexibility of investments. While opting for company deposits, diversify your risk by spreading your deposit over a large number of companies engaged in different industries. “Overall, investors could have as much as 10% of the total FD investments in one particular company,” says Harish Sabharwal, chief operating officer of Bajaj Capital.

Compiled by: Krishna Kanojia