

Real Estate dealing in CASH

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This week I will answer a wide variety of questions from readers:

Q1: My question pertains to the sale of my flat for which cash payment of Rs. 3.50 lakhs was received by me. I suppose the cash does not cover restrictions of receiving payment only through account payee cheques. Kindly confirm?

S.P.UPADHYAY

Ans 1 : Restriction on receiving payment only through account payee cheque apply to receipt and payment of loan and deposit U/S 269SS & 269TT and business expenditure exceeding Rs. 20000/- U/S 40(A)(3).

In your case since you have received cash on sale of your flat ,no such restriction is applicable to you.You can receive advance/sale consideration in cash.

Q2: I am regular tax payer in five figures.I have some business income as well some income from other sources but in previous year my business income is in negative and my gain from share transaction is (short term and delivery based) is app 3 lacs on turnover around 45 lacs . My question is, should I treat my share income as business income or short term capital gain. Please advice.

RAJESH JAIN

Ans2: Your income from share transaction is Delivery based and short term ,therefore it will be treated as short term capital gain. Your business loss can be set off against your short term capital gain because Loss from business can be set off against all other income except against the income under the head .

If after setting off business loss(assumed non speculation) against current year income there still remains some unabsorbed business loss the same will be carried forward for being set off only out of any business gain, for a period of 8 years. .

Q3: I have received Rs. 5.41 lacs as commutation of 40% of pension on retirement at superannuation . The department treats it as advance loan to the retiree and recovers it over a period of 15 years i.e interest is charged on it.

I have invested the amount so received in MIS/Senior citizen scheme of saving of post office /Govt. of India and the interest thus earned is again charged under the income tax act.Does this mean that the person getting commutation of pension, first pay interest to the department and then pay income tax on the interest earned from investment of the received amount?

Is there any provision in the Income Tax Act wherein such double taxation can be avoided?

Parmatma saran

Ans3: There is no such provision as mentioned by you. Please understand that the commuted amount is tax free when received , it is not treated as loan by the department and no interest is charged to you, as mentioned by you. Your question is not correct to this extent.

Commuted value of pension is exempt as per provisions of section 10(10A)

However interest income earned on MIS is taxable under the head income from other sources. There does not seem to be any instance of double taxation in your case.

Q: I am a non resident having some business income in India . My turnover from the business in India for the year ending 31.03.2006 exceeds Rs. 40 lacs but my income from this business is below the taxable income . My questions are:

Am I required to file return in India ?

Will my income be charged to tax at special rates ?

Am I required to get my accounts audited as per Indian rules even if my income is below the taxable limit ?

Ans: A non resident is chargeable to tax in India only for his Indian Income. In your case as you have mentioned that you have some business income in India so you are required to file return in India for your Indian income.

Income of non resident is chargeable to tax at general rates applicable to person residing in India except certain prescribed special cases . In your case income is chargeable to tax at general rates .

Tax audit is done u/s 44AB if turnover exceeds Rs. 40 lacs. Section 44AB does not make any distinction between resident and non resident . This audit however would be confined only to the Indian operations carried out by the non resident and would be conducted even if your income is below taxable income.