

E-circular dated 5<sup>th</sup> April 2017

**Integrated Association of Micro, Small & Medium Enterprises of India**

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Dear Members,

## Rent Receipts for HRA

**Recent Court Judgement** (dated 30-3-2017)

### Things to remember– Employers & Employees:

**Focus of this Circular** : Recommended Do's and Don'ts

#### **Executive Summary**

**News Item** : ITAT admonishes “bogus” rent receipt for HRA exemption

The learned Income tax Tribunal, in case of Meena Vaswani, Mumbai vs Acit 26(1), Mumbai on 30 March, 2017, struck down an assessee's claim of rent paid to her mother, to claim exemption of HRA u/s 10(13A). Tax, Interest and Penalty shall follow.

A lot of employees genuinely live with their parents. And they give genuinely pay them rent. This could be as a share of the household expense, as a earning member of the joint family, it is their duty. But do they follow the required precautions ?

**If not, then ..... they could be in a soup.**

Some people you might know might be using this 'practice'. And you can forward this guidance note to them. Source : <https://goo.gl/LPV382>

The case has been covered on [www.Taxmann.com](http://www.Taxmann.com) and [www.Indiakanoon.org](http://www.Indiakanoon.org).

### **Short summary of the case**

Assessee was a highly paid Salaried executive. She owned a large house property against which she had a housing loan. And used to take Interest payment deduction u/s 24 (1)... thus reducing tax on her income .

Further, She was getting a HRA of about 31000 pm. And every year, she used to submit Rent receipts from her mother to her employer.

### **Short summary of the Decision**

ITAT said, Both interest and rent payment cannot be allowed, in this case.

ITAT said, Exemption cannot be given on the basis of Sham Transactions. No evidence produced like Rent agreement, Rent payment by cheque, or cash drawings for the purported rent paid, letter of the society intimating about the assessee's tenancy, electricity bill pymt by cheque, any other evidence. Even the mother was never declaring that Rent as income in her income tax return. Infact the parent was not filing her income tax return at all.

ITAT observed that rent of Rs 31,500 pm was too high for a 400 sq feet flat. That too on sharing basis with mother and younger sister. ITAT also observed that the assessee's husband and children were living in a posh flat just 1 km away in a posh condominium. The assessee's contention that she was not living with her husband and instead living in that rented 1BK flat of 400 sqft was not looking logical.

Hope this helps maintain higher discipline in your company. See the Link to the decision : <https://goo.gl/LPV382>.



### **Do's and Don'ts for the Employee**

#### **Do's**

1. Prepare a proper rent agreement.
2. Get them made professionally on stamp papers if possible
3. Pay rent genuinely by cheque only

4. Rent value must be “reasonable” based on market rates for similar property
5. Get rent deed registered with the Society / RWA of the area, if possible.
6. Parent must file his/her income tax return
7. The house must be pre-owned by the parent out of his/her own sources of income.

#### **Don'ts**

8. Do not try to be too smart. The law is catching up.
9. Do not try to take both Housing Loan interest deduction (u/s 24(1)) and also HRA exemption, usually, unless the prescribed conditions are met properly.
10. Do not fake stories. Be Genuine.

#### **Do's and Don'ts for the Employer ( TDS Deductor ) / GM-Finance**

#### **Do's**

11. Get a proper rent agreement. From the employee
12. See if they are paying rent genuinely by cheque ?
13. Must See other points in the list above ( details in next para )
14. Must take Form 12B duly signed from the employee
15. See that they have deducted TDS properly ( if payment is more than Rs 50000 pm ) ?

#### **Don'ts**

16. Do not try to help the employee too much.
17. The law is catching up. If caught , the company will be in problem.
18. The HRA expense itself can be disallowed as an expense, if TDS not done properly.

#### **TDS on Rent to Landlord----- start: Even for individual Salaried people**



This Budget 2017.... First time ever, to reduce the tax evasion by “landlords”, who don’t disclose their Rental income, and to manage the employees who say that they are paying rent, get HRA exemption but actually paperwork is not ok, law has been made “smarter”

- The new law says, Even if you are a Salaried person,
  - if you pay rent of over Rs 50000 p.m.
  - you have to Deduct TDS (new section 194-IB).
- Rate is : 5%
- Minimum Exemption : Rs 50000 p.m.
- Section : 194 IB
- Notes : no need of TAN, no need of monthly TDS, just do once an year.
- From when ? Applicable w.e.f. 1-6-2017

#### **Source**

<https://teachoo.com/5564/367/TDS-Section-194---IB-TDS-on-Personal-Rent-@-5-/category/Rates-of-TDS/>

For your knowledge, the Finance Bill has already been passed

Source : <http://www.livemint.com/Politics/eLsQcKJb76iOntHenXrjcl/Parliament-passes-Finance-Bill-Rajya-Sabha-amendments-rejec.html>

## Conclusion

We at I am SME of India, have time and again brought to the notice of our members that tax rates are pretty low in India. Highest slab is at 30%. And as compared, the peak rates in Europe , Canada and USA are 40% to 55% on Salary too.

So, as entrepreneurs ,we must comply with the law, and also help our employees comply with the law. Our tax rates are small just 25% for companies and just 12% even for an employee drawing a salary of even Rs 1 lakh per month.

| Salary p.m. | Salary p.a. | Total Income tax after some savings | Effective Tax % | Tax reqd per month |
|-------------|-------------|-------------------------------------|-----------------|--------------------|
| 15,000      | 180,000     | 0                                   | 0.00%           | 0                  |
| 25,000      | 300,000     | 2,060                               | 0.69%           | 172                |
| 35,000      | 420,000     | 6,695                               | 1.59%           | 558                |
| 40,000      | 480,000     | 10,815                              | 2.25%           | 901                |
| 50,000      | 600,000     | 20,600                              | 3.43%           | 1,717              |
| 60,000      | 720,000     | 50,470                              | 7.01%           | 4,206              |
| 100,000     | 1,200,000   | 153,470                             | 12.79%          | 12,789             |

### For queries, suggestions and feedback , you can e-mail us

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