



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

OFFICE OF THE FINANCIAL ADVISER

Registered Office: VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM - 695 004
Telephone Nos.: 2445807, 2444240 FAX: 0471 - 2514244
E-Mail: faksebdata@dataone.in, fakseb@gmail.com
Website: www.kseb.in CIN: U40100KL2011SGC027424

No. FA/Tax Cell/IT/Housing Loan /2019-20/29

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CIRCULAR

Sub: Income Tax TDS – deduction towards HCA principal and Interest in case of joint ownership – clarification requested – reg

It is informed by some of the ARUs that as per the direction from Income Tax Department, in case of jointly owned property, even if the co-owner is not a co-borrower, only 50% deduction is allowed to the co-owner, who is repaying the house loan. In view of the above, ARUs have requested for clarification on the extent of admissibility of HCA Principal and Interest in case of jointly owned property.

With reference to the above, the provisions relating to Income from house property, as contained in the Income Tax Act 1961, Circular No.04/2020 dt 16/01/2020 and relevant clauses of Transfer of Property Act 1882 are reproduced below:

1. **Section 22:** The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".
2. **Section 23 (2):** Where the property consists of a house or part of a house which—
 - a. is in the occupation of the owner for the purposes of his own residence; or
 - (b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,the annual value of such house or part of the house shall be taken to be nil.
3. **Section 24 - Deductions from income from house property:**

Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

- (a) a sum equal to thirty per cent of the annual value;

- (b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the **amount of interest payable by the assessee** for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

From the above, it is clear the person who makes payment of EMIs is entitled to deduction in respect of interest on housing loan.

4. Section 26: Property owned by co-owners -

Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

Explanation.—For the purposes of this section, in applying the provisions of sub-section (2) of section 23 for computing the share of each such person as is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that sub-section.

5. Circular No. 04/2020 dt 16/01/2020 issued by Income Tax Department:

Para 3.6 : Computation of income under the head “Income from house property”:

While taking into account the loss from House Property, the DDO shall ensure that the employee files the declaration referred to above and encloses therewith a computation of such loss from house property. Following details shall be obtained and kept by the employer in respect of loss claimed under the head — Income from house property separately for each house property:

- a. Gross annual rent/value
- b. Municipal Taxes paid, if any
- c. Deduction claimed for interest paid, if any
- d. Other deductions claimed
- e. Address of the property

The DDO shall also ensure furnishing of the evidence or particulars in Form No. 12BB in respect of deduction of interest as specified in Rule 26C read with section 192 (2D).

Para 3.6.1: Conditions for Claim of Deduction of Interest on Borrowed Capital for Computation of Income From House Property [Section 24(b)]:

Section 24(b) of the Act allows deduction from income from houses property on interest on borrowed capital as under:-

- i. the deduction is allowed only in case of house property which is owned and is in the occupation of the employee for his own residence. However, if it is actually not occupied by the employee in view of his place of the employment being at other place, his residence in that other place should not be in a building belonging to him.
- ii. the quantum of deduction allowed as per table below:

| Sl No | Purpose of borrowing capital | Date of borrowing capital | Maximum Deduction Allowable |
|-------|--|---------------------------|--------------------------------------|
| 1 | Repair or renewal or reconstruction of the house | Any time | Rs. 30,000/- |
| 2 | Acquisition or construction of the house | Before 01/04/1999 | Rs. 30,000/- |
| 3 | Acquisition or construction of the house | On or after 01/04/1999 | Rs. 1,50,000/- (upto AY 2014-15) |
| | | | Rs. 2,00,000/- (w. e. f. AY 2015-16) |
| 4 | Aggregate deduction of Sl. 1 and Sl. 3 of the table above shall not exceed Rs.2,00,000/- from the Financial Year 2019-20 | | |

In case of Serial No. 3 above -

- a. The acquisition or construction of the house should be completed within 5 years from the end of the FY in which the capital was borrowed. Hence, it is necessary for the DDO to have the completion certificate of the house property against which deduction is claimed either from the builder or through self-declaration from the employee.
- b. Further any prior period interest for the FYs upto the FY in which the property was acquired or constructed (as reduced by any part of interest allowed as deduction under any other section of the Act) shall be deducted in equal installments for the FY in question and subsequent four FYs.
- c. The employee has to furnish before the DDO a certificate from the person to whom any interest is payable on the borrowed capital specifying the amount of interest payable. In case a new loan is taken to repay the earlier loan, then the certificate should also show the details of Principal and Interest of the loan so repaid.

Section 192(2D) read with rule 26C makes it mandatory for the DDO to obtain following details/evidences in respect of Interest deductible.

- i. Interest payable or paid
- ii. Name of the lender
- iii. Address of the lender
- iv. PAN or Aadhaar number as the case may be, of the lender.

6. Section 45 of Transfer of Property Act 1882:

Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively,

they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Thus, as per Section 45 of Transfer of Property Act 1882, it is the amount contributed by each owner, which decides the ownership share in the property. Only if the share of contribution is not available, it will be treated as equal share among joint owners.

It may be noted that the provisions of the Acts or Circular mentioned above does not limit claim by co-owners in proportion to their ownership. Thus the assessee is eligible for deduction in respect of repayment of principal and interest on HCA, which is paid out of the source of income of the assessee.

It is a general social practice to have the spouse as co-owner to provide social security and deal with inheritance related issues on death of spouse. The banks prefer the spouse as co-borrower, if the land is jointly owned, from the point of view that in case of death of borrower, the liability continues to remain on surviving spouse. The banks prefer to have spouse as co-borrower for the purpose of additional security to the loans extended.

From the forgoing provisions, it can be concluded that –

The assessee is eligible for deduction in respect of repayment of principal and interest on HCA subject to the following conditions –

1. The assessee is the owner or co-owner of the property;

No deduction will be allowed, if the assessee is not the owner of the property, even if the loan is taken and repayment made by the assessee.

Even though the definition of ownership includes “deemed owner” as defined in section 27 of the Income Tax Act, it is advisable to consider the ownership as “ownership as per records” for the purposes of making TDS deduction under section 192 of the Income Tax Act, to avoid legal disputes with the Income Tax Department. However the assessee has every right to claim the deduction at the time of filing the return of Income treating himself as a deemed owner, if he is so, as per the provisions of the Income Tax Act.

2. The loan is taken either individually or jointly;

3. Loan repayment is made from the source of Income of the assessee;

If loan is repaid partly by the assessee and partly by others, only proportional deduction will be allowed. This can be ascertained from the Bank Statements of the assessee.

4. The Claim of Interest will be eligible only from the year of completion of construction of the property (as evidenced by completion certificate obtained) and the pre-construction interest (interest paid by the assessee before the year of completion) will be allowed in 5 years starting from the year of completion equally.

5. The repayment of principal portion of Housing Loan during the pre-construction period is not eligible for deduction under 80C., i.e., deduction for 80C can only be claimed from the year of completion alone. There is no pre-construction principal

eligibility provision in the Income Tax Act.

6. The eligibility of Rs.2 Lakh or Rs.30,000/- wherever applicable is applicable to each Joint owner individually, on combined reading of section 24(b) with that of section 26 and 23(2).

To give further clarity in this regard, the following specific cases are explained-

1. **Where Employee is the Sole Owner of the Property and the repayment of loan is made from his income.**

The case is free of doubts, as the employee can claim full benefit.

2. **Where Employee is the Sole Owner of the Property and the repayment of loan is made from Income of spouse.**

Employee will not be able to claim the benefit of the deduction.

3. **Where Employee is the Sole Owner of the Property and the repayment of loan is shared between employee and spouse.**

Employee can claim deduction in proportion to the share of contribution in repayment of Loan.

If share of contribution is identifiable:

If the employee is able to prove his share of contribution in repayment, through Bank Statements or any other documents, the same may be relied upon.

The claim is admissible in proportion to share of contribution made by the employee in repayment of Home loan.

Certificate/affidavit from the spouse (if not employed) or DDO of spouse (if employed) stating the amount of deduction claimed by the spouse in the Income tax Return of spouse are to be furnished by the employee.

If share of contribution is not identifiable:

In case, the employee is not able to prove the loan sharing proportion, through documents, as the property is solely owned by the employee, an undertaking may be obtained from the employee, stating the share of contribution made by the employee in repaying the Home Loan, and deduction may be allowed subject to the limit prescribed.

Also a certificate/affidavit from the spouse (if not employed) or DDO of spouse (if employed) stating the amount of deduction claimed by the spouse in the Income tax Return of spouse are to be furnished by the employee.

4. **Where the ownership of the House Property as per records is in the name of the Spouse, the Loan is in the name of the employee (or joint loan) and repayment is made by the employee (or jointly).**

In such cases, Housing Loan repayments should not be considered for TDS purposes. However, since the ownership as per section 27 of the Income Tax Act includes "Deemed Ownership", the employee has every right to claim the deduction at the time of filing the return of Income, treating himself as a "deemed owner", if he is so as per the provisions of the Income Tax Act. (It is not upto the Employer to decide whether the assessee is deemed to be an owner or not).

5. **Where the ownership of the House Property as per records is in the name of the Spouse, the Loan is in the name of the employee and Repayment is made by Spouse.**

Employee will not be able to claim the benefit of the deduction.

6. **Where the ownership of the House Property as per records is in the name of the Spouse, the Loan is in the name of the Spouse and Repayment is made by Employee**

Same as Item 4 above.

7. **Where the property is jointly owned by the employee and spouse, and the repayment of loan is made from Income of Spouse.**

Employee will not be able to claim the benefit of the deduction.

8. **Where the property is jointly owned by the employee with spouse and the repayment of loan is made from Income of employee.**

If spouse is employed, either in KSEBL or with other employer

Employee can claim full benefit, provided that a certificate/affidavit from the Employer (DDO) of the spouse should be obtained stating that "the spouse has not claimed the same benefit in her Salary computation". This is to ensure that the employee and spouse has not availed benefit separately.

Where the Spouse of the Employee is unemployed, the Employee can claim full benefit, provided that an affidavit from the spouse of the employee regarding unemployment should be obtained.

9. **Where the property is jointly owned by the employee with spouse, the repayment of loan is made from the Joint Account of the Employee and Spouse and Spouse is unemployed.**

The Employee can claim full benefit, provided that an affidavit from the spouse of the employee regarding unemployment should be obtained.

10. **Where the property is jointly owned by the employee with spouse, the repayment of loan is made from the Joint Account of the Employee and Spouse (employed or having Income) from income of both persons.**

Employee can claim deduction in proportion to the share of contribution in repayment of Loan.

If share of contribution is identifiable:

If the employee is able to prove his share of contribution in repayment, through Bank Statements or any other documents, the same may be relied upon.

The claim is admissible in proportion to share of contribution made by the employee in repayment of Home loan.

Certificate/affidavit from the spouse (if not employed) or DDO of spouse (if employed) stating the amount of deduction claimed by the spouse in the Income tax Return of spouse are to be furnished by the employee.

If share of contribution is not identifiable:

In case, the employee is not able to prove the loan sharing proportion, through documents, as the property is jointly owned, an undertaking may be obtained from the employee, stating the share of contribution made by the employee in repaying the Home Loan, and deduction may be allowed, subject to the maximum of 50% of the total repayment of Home loan during the period.

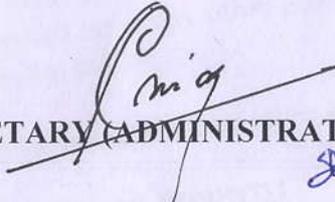
Certificate/affidavit from the spouse (if not employed) or DDO of spouse (if employed) stating the amount of deduction claimed by the spouse in the Income tax Return of spouse are to be furnished by the employee.

In any of the above situations, the employee can make different claim while filing the return of income if beneficial to the employee, provided there is sufficient documentary and legal evidence to his/her merit.

It is reiterated that the provisions of the Acts or Circular mentioned above does not limit claim by co-owners in proportion to their ownership.

In case the Income Tax department insists for any limitation of claim in proportion to their ownership the following case laws may be cited (Softcopy attached)

1. Sanjay Verma, Gurgaon vs ACIT, Gurgaon on 23 December, 2016
2. Vaidya Narayanan Sundaram vs ITO, Bangalore on 24 March, 2017


SECRETARY (ADMINISTRATION)

To

All ARUs