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**Income from tips would be chargeable in the hands of the employees as income from other sources, such tips being received from customers and not from the employer, Section 192 would not get attracted.**

**SC in ITC Limited -vs- CIT [(2016) C.A. No. 4435 of 2016]] has reversed the decision of Delhi HC in CIT vs ITC [(2011)11 taxmann.com 84] on deductibility of TDS in the hands of employer on payment of tips received from customers to the employee. A summary of the decision is as follow:-**

- The issue before the SC was (i) whether assessee can be treated as “assessee in default” for short/non deduction of tax at source on account of banquet and restaurant tips collected and paid by it to its employees? (ii) Whether tips received by the employees of the assessee were profits in lieu of salary within the meaning of Section 15(b) r.w.s. 17(3)(ii) of the Income Tax Act, 1961?
- The SC held that :-
  - Any person responsible” for paying any income chargeable under the head “salaries” is alone brought into the dragnet of deduction of tax at source/s 192. Since, tips is not paid by the employer but by the customer therefore provision of Sec. 192 shall not be applicable
  - For any income to be chargeable as salary following condition must be satisfied:-
    - Payment made to the employee must be by or on behalf of an employer or former employer.
    - Payment made must have reference to contract of employment.
    - There should be a vested right in an employee to claim any salary from an employer or former.
  - In the present case, only the 1<sup>st</sup> condition was satisfied. As other two conditions were not satisfied, as neither the above payments flows from contract of employment nor the employee is vested with a right to demand the same from employer. Hence, tip received from employer cannot be treated as salary income.
  - The view laid down in Rambagh Palace Hotel v. Rajasthan Hotel [(1976) 4 SCC 817] and Quality Inn v. ESI Corpn. [(2008) 2 SCC 549] that the true character of tips cannot be treated as any payment made by the management but it can only be treated as a transfer of what is collected from the customer and paid to the staff. This supports the above view laid down by SC.
  - As the income is no longer chargeable to salary, the provision for deduction of TDS u/s 192 of the Act doesn't come in play and hence, assessee cannot be treated as assessee in default/s 201 and no interest u/s 201(1A) is not required to be levied.

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