

Alimony And Tax Implications

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Meaning of Alimony

Alimony or maintenance is a U.S. term signifying a legal obligation to provide financial support to one's spouse from the other spouse after marital separation or from the ex-spouse upon divorce. It is established by divorce law or family law in many countries and is based on the premise that both spouses in theory have a legal obligation to support each other during their marriage or upon separation or/and divorce. Alimony can also be said to be the allowances which husband or wife by court order pays to other spouse for maintenance while they are separated or after they are divorced.

Introduction

Though this is important matter to deal with during the litigation of a divorce case, the very perception of right to claim the financial support for post divorce maintenance was not quite a familiar concept among the Indian divorce seekers, especially women even few years back. But as the rate of divorce is increasing in India at a rapid speed, people are becoming aware of the various details related to divorce laws. The era of feminist campaigns, and spread of education have contributed to the growing recognition of alimony in divorce cases.

The alimony is an obligation by laws in almost all the countries of the world. It is expected that both the spouses irrespective of the sex must bear the maintenance support during and after marriage. According to marriage conventions marriage is a sacred union. Once the knot is tied, the duties and obligations of marriage are to be carried out for the rest of the life even if there is mental disparity or physical separation between the husband and the wife. The husband is bound to take up the responsibilities for the maintenance of his wife in spite of sharing an estranged relationship. As time changed, the laws and education empowered woman, divorce came as a natural solution for an abortive wedding.

The present society treats men and women equal, as a result the burden of alimony can now fall upon either side of the party depending upon the financial conditions of the spouses. Though in the present age of egalitarianism both men and women are now equal in the eyes of law, in practice men are more liable to provide interim support to their ex spouse during the litigation procedure.

After divorce either of the spouse has the right to claim alimony. Though not an absolute right, but can be granted by the court depending upon the circumstances and financial conditions of both the spouses.

The following are the conditions depending on which alimony is awarded by the court.

Alimony is generally not granted to the seeking spouse if he or she is already receiving support during the time of divorce. Although the rewarding of alimony can be revised in such events based on the arguments for claiming the support. In case of a contested

divorce, often spouses fail to come to any understanding regarding alimony. In such situations, the court takes up the task of making a decision on the amount of alimony to be paid.

The sum and period of alimony generally depends upon how long the marriage existed. Marriages that lasted more than 10 years are entitled to be granted a life long alimony. Age of the spouse is also taken into consideration while awarding alimony. Normally a young recipient of alimony gets it for a smaller period of time if the court thinks that he or she will soon be able to become financially sound through prospective career excellence. Alimony is also in vogue in order to equalize the economic condition of both the spouses. The higher earning spouse is entitled to pay a heavy amount as alimony. The spouse who is projected to be enjoying a prosperous career is liable to pay high alimony amount. If one of the spouses is suffering from poor health, the other is subjected to payment of high alimony to ensure proper medication and well being of the other spouse. The terms and conditions of payment of alimony in India vary from one personal law to another. The Shah Bano case is one such instance that exposes how the sustenance of a divorced woman is affected due to inclusion of inappropriate laws regarding post divorce maintenance and financial support.

Taxability

Now with this background about 'Alimony', let's look at the taxation of the alimony in the hands of the receiver. The following factors need to be considered in this regard:

The word 'Income' is defined in S. 2(24) of the Income-tax Act. This definition does not specifically cover 'Alimony'. But at the same time this definition is an inclusive definition and hence whatever can fall under natural meaning of the word 'Income' is covered under this definition. Now to look at the natural meaning of the word 'Income', we must consider the following factors.

The Income Tax Act classifies income into two categories - 'revenue receipts' and 'capital receipts'. Generally, revenue receipts are taxable income and are subject to certain deductions/exemptions, whereas capital receipts are non taxable.

When a divorcee receives alimony from estranged spouse, it constitutes as a part of capital receipt. Considering, that you are receiving a lump sum amount, it will fall under capital receipt, hence you will not have to pay any tax on it. This is because the amount received is not in exchange of any services offered towards any business, vocation or employment. Therefore, the amount that you would receive as alimony would tax free. However, note that if the alimony is received on a monthly basis, it will be treated as revenue receipt and hence it will be taxable. In such a case, the law interpreted here is that a one time lump sum amount received will be treated as capital receipt and monthly amount (considered as income) as capital receipt.

To return to the question of taxability, though alimony cannot be said to arise from any particular "source" or be treated as a consideration for any past service, business or vocation, it is taxable in the hands of the recipient as per the ruling of the Mumbai High Court. The judgment concludes that monthly alimony received by a divorcee from an

estranged spouse will remain taxable, while a one-time alimony payment will be a capital receipt and won't be taxable.

Case Laws

1. The Bombay High Court in *Princess Maheshwari Devi of Pratapgarh v. Commissioner of Income-tax* 147 ITR 258 (Bom) answered the two questions raised before it

(a) Whether, alimony received by the assessee under section 25 of the Hindu Marriage Act, 1955, on nullity of marriage, is income in her hands and liable to tax?

The Court held: No. The reasons were as under - In our view, from the point of view of taxability, the decree must be regarded as a transaction in which the right of the assessee to get maintenance from her ex husband was recognized and given effect to. That right was undoubtedly a capital asset. By the decree that right has been diminished or partly extinguished by the payment of the lump sum of Rs. 25,000 and balance of that right has been worked out in the shape of monthly payments of alimony of Rs. 750 which, as we have pointed out, could be regarded as income. It is, in our view, beyond doubt that, had the amount of Rs. 25,000 not been awarded in a lump sum under the decree to the assessee, a larger monthly sum would have been awarded to her on account of alimony. It is not as if the payment of Rs. 25,000 can be looked upon as a commutation of any future monthly or annual payments because there was no pre existing right in the assessee to obtain any monthly payment at all. Nor is there anything in the decree to indicate that Rs. 25,000 were paid in commutation of any right to any periodic payment. In these circumstances, in our view, the receipt of that amount must be looked upon as a capital receipt.

(b) Whether, on the facts and in the circumstances of the case, the alimony of Rs. 750 per month received by the assessee from her ex husband on the nullity of marriage is income in her hands liable to tax?

The amount of Rs. 750 per month is what the assessee periodically and regularly gets and is entitled to get under this decree. This amount must, therefore, be looked upon as a return from the said decree which is the definite source thereof. The word "return", in our view, in a case like this, can never be interpreted as meaning only a return for labour or skill employed on capital invested. Such a definition of "return" would be too narrow and would exclude the case of voluntary payments, when it is the settled position in law that in some cases even voluntary payments can be regarded as "income". Although it is true that it could never be said that the assessee entered into the marriage with any view to get alimony on the other hand, it cannot be denied that the assessee consciously obtained the decree and obtaining the decree did involve some effort on the part of the assessee. The monthly alimony being a regular and periodical return from a definite source, being the decree, must be held to be "income" within the meaning of the said term in the said Act.

2. In *CIT v. Shaw Wallace and Co.*, AIR (1932) PC 138; (1932) 2 Comp. Cases 276; it has been held that: "The object of the Indian Act is to tax income, a term which it does not define. It is expanded, no doubt, into income, profits and gains, but the expansion is more a matter of words than of substance. Income, in this Act connotes a periodical monetary return coming in with some sort of regularity, or expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree or the crop of a field."
3. In *Dooars Tea Ltd. v. Commr. of Agri.*, IT (1963) 44 ITR 6, the Supreme Court has pointed out that it is necessary to bear in mind that the word 'income' as used in the Indian IT Act, 1922, is a word of elastic import and its extent and sweep are not controlled or limited by the use of the words 'profit and gains' and they have pointed out that the diverse forms which income may assume cannot exhaustively be enumerated, and so in each case the decision of the question as to whether any particular receipt is income or not must depend upon the nature of the receipt and the true scope and effect of the relevant taxing provisions.
4. In *H.H. Maharani Shri Vijaykuverba Saheb of Morvi v. CIT*, (1963) 49 ITR 594, it was held that a voluntary payment, which is made entirely without consideration and is not traceable to any source which a practical man may regard as a real source of his income but depends entirely on the whim of the donor, cannot fall in the category of 'income.' Thus voluntary and gratuitous payments which are connected with the office, profession, vocation or occupation may constitute income, although if the payments were not made, enforcement thereof cannot be insisted upon. These payments constitute income because they are referable to a definite source, which is the office, profession, vocation or occupation. It could thereof be said that such payment is taxable as having an origin in the office, profession, or vocation of the payee, which constitutes a definite source for the income. What is taxed under the Indian IT Act is income from every source (barring the exception provided in the Act itself) and even a voluntary payment, which can be regarded as having an origin, which a practical man can regard as a real source of income, will fall in the category of income, which is taxable under the Act."
5. The motive of payer is not relevant while deciding whether a receipt is revenue or capital in nature. [*P. H. Divecha v. CIT*, (1963) 48 ITR 222 (SC)]
6. In *CIT v. Smt. Shanti Meattle*, (1973) 90 ITR 385 (All.) it was held that "In the circumstance of the case, the allowance received by the assessee from her husband was held to be taxable as income in her hands."
7. In *CIT v. M. Ramalaxmi Reddy*, (1980) 19 CTR (Mad.) 270; (1981) 131 ITR 415, it has been held by the Division Bench of the Madras High Court that a receipt cannot be treated as income where no characteristics of income can be detected in

- it. Where a person gets some receipt of money where he does not angle for it, or where it is not the product of an organised seeking after emoluments, or where it is merely a chance encounter with a venture, which while enriching him does not form part of any scheme of profit making, the idea of income is absent. It has been held there that the real basis for the concept of non-taxable casual receipt is that the transaction in question which produces it does not constitute any trade or an adventure in the nature of trade.
8. It has been held in the case of *Mehboob Production P. Ltd v. CIT*, (1977) 106 ITR 758 (Bom.) that: "In order to constitute of income, the receipt must be one which comes in (a) as a return, and (b) from a definite source. It must also be of the nature which is of the character of the income according to the ordinary meaning of that word in the English language and must not be of the nature of a windfall." A receipt in lieu of source of income is a capital receipt and a receipt in lieu of income is a revenue income.
 9. It has been held in the case of *Commissioner of Income-tax v. M. P. Poncha*, (1995) 125 CTR (Bom.) 274; (1995) 211 ITR 1005 (Bom.) that:
"Payment of alimony to divorced wife — payment made by employer out of assessee's salary under instructions of assessee. This is a clear case of application of income by the assessee for payment of alimony to his ex-wife and maintenance of his minor child. The direction to the employer or the agreement with the employer to pay the agreed amount of Rs.650 per month to the ex-wife every month is only a mode of payment .It does not in any way amount to diversion of salary income before it accrues to the assessee. The employer is obliged to pay the amount only after the salary income accrues to the assessee and becomes payable to him. It is at that point of time that the employer has agreed or undertaken to pay as per the wishes of the assessee the sum of Rs.650 per month to his ex-wife. The employers have only agreed to deal with the amount of salary accrued to the assessee in such a manner as directed by him. It is a clear case of application of income which has accrued in the hands of the assessee. This is not a case of diversion of income by overriding title."
 10. In the judgment of the Board in the case of *Raja Bahadur Kamakshya Narain Singh of Ramgarh v. CIT* [1943] 11 ITR 513 (PC), delivered by Lord Russell of Killowen, their Lordships of the Privy Council, after referring to the aforesaid two decisions, have observed as follows (p. 522):
"The word 'income' is not limited by the words 'profits' and 'gains'. Anything which can properly be described as income is taxable under the Act unless expressly exempted.
It is not in their Lordship's opinion correct to regard as an essential element in any of these or like definitions a reference to the analogy of fruit, or increase or sowing or reaping or periodical harvests."
 11. In *Maharajkumar Gopal Saran Narain Singh v. CIT* [1935] 3 ITR 237 (PC), the assessee, who owned a nine-annas share in an estate, with the object of discharging his debts and of obtaining for himself an adequate income for his life,

conveyed the greater portion of his estate to his son-in-law's mother who owned the remaining seven-annas share in the estate. The consideration for the transfer was: (i) the payment of the assessee's debts amounting to Rs. 10,26,937 ; (ii) a cash payment of Rs. 4,73,063 ; and (iii) an annual payment of Rs. 2,40,000 to the assessee for his life. It was held by the Privy Council, inter alia, that this was clearly a case where the owner of an estate (the assessee) had exchanged a capital asset for (inter alia) a life annuity which was income in his hands and not a case in which he had exchanged his estate for a capital sum payable in instalments and that this income was taxable under the I.T. Act, even though the annuity did not constitute or provide a profit or gain to the assessee. After referring to the aforesaid decision of the Privy Council in the case of Shaw Wallace & Co., their Lordships observed as follows (p. 242):

"The word 'income' is not limited by the words 'profits' and 'gains'. Anything which can properly be described as income is taxable under the Act unless expressly exempted. In their Lordships' view the life annuity in the present case is 'income' within the words used in the judgment of this Board which was delivered in the case of CIT v. Shaw Wallace & Co. ."

Conclusion

Alimony cannot be said to be income from any particular source. Nor it can be said to be return for any past service or any consideration. It is a personal payment. Decree is a legal process of pronouncement. The right to claim alimony originates from the relationship of marriage. There can be no decree of alimony without marriage. Alimony should not be regarded as 'return' from the decree, because it has its roots in the relationship of marriage and NOT in the decree. A husband may agree to pay alimony to his wife with mutual consent without existence of decree. If alimony were to be treated as income, then money given by husband to wife every month could also be treated as income applying the same analogy as given in the case of Princess Maheshwari Devi (supra). The intention of the statute governing alimony is to provide for 'Maintenance and support' of the dependant and certainly not to create a 'source of income' in the common parlance.

As a matter of law, the decision of Princess Maheshwari Devi (Bombay High Court) holds good and accordingly monthly alimony shall be taxable and single payment alimony shall be dealt as capital receipt. However owing to reasons cited above, the decision is worth another consideration.

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