

Alimony and Income Tax: Is ex-wife liable to pay income tax on settlement amount received from husband in a divorce case?

By Neelanjit Das, ET Online | Last Updated: Jan 21, 2025, 06:01:00 PM IST

Synopsis

Alimony tax: Did you ever wonder if alimony is taxable for the ex-wife. This is because the alimony is paid by husband after paying all the due income tax. Experts say, various court judgements said, yes ex-wife has to pay tax on alimony. However in one situation husbands have to pay income tax on alimony paid to ex-wife. Read to know more.



Ex-wife liable to pay income tax on alimony given by husband? Know what the law says

The law mandates women have a right to get financial support from their spouse during separation or following a divorce. This financial support is called alimony, however, it's not as simple as it seems. It may be a one-time payment of a lump sum, or it may be in the form of regular payments or a combination of both. Often interim maintenance payment starts before [divorce](#) while it may also continue after divorce. Sometimes [alimony](#) is not pure financial support, rather it can be distribution of family assets also.

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Each alimony case is distinct and personal to the case at hand. Regardless of this fact, alimony is a financial transaction and like all financial transactions are required to stand the scrutiny of [income tax](#) liability. So, do the beneficiaries receiving alimony need to pay income tax on it? The answer to this is tricky.

Since the Income Tax Act is silent on the aspect of taxation of alimony, experts say we need to rely on judgements and precedents set by the ITAT, High Court and Supreme Court.

How is alimony taxable?

We have asked various experts about situations of alimony payment involving various scenarios. Here's what they said:

Situation 1: Alimony received as one-time payment

Kunal Savani, Partner, Cyril Amarchand Mangaldas says, "The Income Tax Act, 1961 does not include specific provisions on alimony, so it is necessary to look at judicial precedents for guidance. For example, the relinquishment of conjugal rights by the wife in exchange for alimony is not considered a gift made for inadequate consideration. As a result, a one-time lump sum alimony payment is classified as a capital receipt and is exempt from taxation. This tax treatment can be drawn from case laws such as Princes Maheshwari Devi v. Commissioner of Income Tax, ACIT v. Meenakshi Khanna, etc."

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Pallav Pradyumn Narang, Partner, CNK, says, "Lump-sum alimony is treated as a capital receipt and is not taxable. This payment is considered compensation for relinquishing the recipient's right to future maintenance, akin to the receipt of a capital asset. This was confirmed in the case of Princess Maheshwari Devi of Pratapgarh vs CIT (1983), where the Bombay High Court held that lump-sum alimony is not income but a transaction recognizing a capital asset. However, some argue that in cases of mutual divorce agreements, the capital receipt nature of alimony payments could be contested."

Rytim Vohra Ahuja, Senior Associate at Karanjawala & Co, "In Princess Maheshwari Devi of Pratapgarh, Poona v. Commissioner of Income Tax (1984) 147 ITR 258, the Hon'ble Bombay High Court after considering at length the definition of the word income held that receipt of lumpsum alimony must be looked upon as a capital receipt as it is not paid in commutation for any periodic expense. In Prema G. Sanghvi v. ITO (ITAT Mumbai), it was held that lumpsum alimony is not taxable being a gift to the recipient spouse."

Situation 2: Alimony received as recurring monthly or yearly payments

Ahuja says, "Yes, Alimony received as recurring monthly or yearly payments are taxable as each such payment is considered a revenue receipt.

Alay Razvi, Managing Partner, Accord Juris, says, "Recurring alimony payments are treated as income and are taxable in the hands of the recipient under the head "Income from Other Sources". This is because such payments are periodic in nature and intended for meeting regular expenses."

According to Ahuja, "In the case of Princess Maheshwari (supra), the Hon'ble High Court has distinguished between [recurring alimony payments](#) and lumpsum alimony payments. The Court relied on CIT v. Shaw Wallace and Co,

wherein the Privy Council held that the object of the Indian Act is to tax 'income'. And 'Income' connotes a periodical monetary return coming in with some sort of regularity or expected regularity, from definite sources. The Court held that a decree of divorce directing a payment of any recurring alimony is the source of such payments and therefore can be construed to be income under the Income Tax Act."

Situation 3: Alimony received through transfer of assets

It may include assets transferred before divorce or after divorce with different income tax liabilities.

Before Divorce

Narang from CNK explains that if assets are transferred before the divorce without payment, they are treated as gifts from one spouse to the other. Under Section 56(ii) of the Income Tax Act, 1961, gifts from relatives are tax-exempt. Additionally, income generated from the asset (e.g., rent) will be clubbed with the income of the transferring spouse under Section 64(1)(iv). The recipient spouse has no tax liability in such cases.

After Divorce

He further explains that after the divorce, the spouses are no longer considered "relatives" under Section 56(ii). Consequently, any asset transfer becomes taxable in the hands of the recipient. Additionally, any income generated from the asset post-divorce is taxable for the recipient spouse.

Situation 4: Maintenance given without divorce

According to Ahuja, maintenance paid by one spouse to another without divorce but living separately will be taxed or not depending on the circumstances of the separation.

"If the separation stems from an agreement between the parties or from a decree passed by a competent court, any recurring maintenance payment will be taxed. In the event the parties are living separately without any legal declaration of the same, the monthly maintenance will not be taxed as it will be considered as a gift from one spouse to the other. In Commissioner of Income-Tax v. Shanti Meattle, the Hon'ble Allahabad High Court held that recurring monthly payments from a husband to a wife would constitute the wife's income and would be taxable under the Income Tax Act. However, the taxable amount would exclude any maintenance towards minor children," Ahuja says.

Payer can claim tax deductions for payment of alimony?

Savani from Cyril Amarchand Mangaldas says: "The alimony payments—whether made monthly, annually, or as a lump sum—are considered a personal obligation and are not tax-deductible for the payer. For instance, the Bombay High Court in one of the judgements has clarified that even if the husband's employer directly pays the alimony to the former wife out of his salary, the full salary amount will remain taxable in the husband's hands. The payment made by the employer to the wife is not deductible from the husband's salary income for tax purposes. Alimony are designed to be fair to both spouses, ensuring that the wealthier party provides financial support to the financially weaker spouse and to safeguard a reasonable standard of living for both individuals post-divorce. Thus, alimony obligations are personal and cannot be used to reduce taxable income."

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