

Contribution to approved superannuation fund isn't a taxable perquisite until employee is entitled to receive it: AAR

Summary – The Authority for Advance Rulings Delhi in a recent case of Royal Bank of Scotland, (the Assessee) held that tax is not required to be deducted at source under section 192 by applicant at the time of making contribution to superannuation fund (for an amount exceeding one lakh rupees per employee) since employees do not get a vested right at time of contribution to fund by employer and hence it cannot be regarded as a taxable perquisite.

Facts

- The applicant has filed instant application seeking advance ruling on question as to whether on the facts and circumstances of the case, tax is required to be deducted at source under section 192, by the applicant on the contribution to the superannuation fund (for an amount exceeding one lakh rupees per employee) as perquisite and where the same is not so deducted, whether the applicant would be treated as an 'assessee in default'.

Held

- The AAR held that the judgment of the Supreme Court in *CIT v. L.W. Russel* AIR 1965 SC 49 applies to the facts of the present case. There, it was held that one cannot be said to allow a perquisite to an employee if the employee has no right to the same.
- It cannot apply to contingent payments to which the employee has no right till the contingency occurs. The employee must have a vested right in the amount.
- In view of above, the AAR ruled that tax is not required to be deducted at source under section 192 while making contribution to superannuation fund in question.