



Issues on TDS in **respect of Residents...**

Credit of T.D.S

Rule for allowing credit for TDS for the purpose of section 199. Rule 37BA inserted w. e. f. 01/04/2009 vide notification No.28 dt. 16.03.2009.

Conditions:

- ❖ On the basis of information of tax deducted furnished by the deductor.
- ❖ Information in Return of Income.
- ❖ Credit will be allowed for the Assessment Year for which such income is assessable.

Where Tax is deducted and paid to Central Government and the income is assessable over a number of years, credit for TDS shall be allowed across those years in the same proportion in which the income is assessable to tax .



Contd'

- Ref. **Sec. 198** :All sums deducted in accordance with the provisions of this chapter shall, for the purpose of computing the income be deemed to be income received.[Except Salary]
- Ref. **Sec. 205** : Where tax is deductible at source under the provisions of this chapter, the assessee shall not be called upon to pay the tax to the extent.....

Issues

- Credit to be allowed in which year?
- What if income is not assessable (e.g. reduces pre-operative exps.) ?
- Whether sec. 198 applies even if income not recd?

Issues

- Can credit of TDS be claimed if following cash system of accounting for fees not received during the year but tax deducted on same by deductor?

Ref:

Praveen kumar Gupta Vs. ITO I.T.A.No.
1252/DEL/2012 / dt. 27.07.2012

Issues

- The word “for the assessment year for which such income is assessable” omitted.
- No mentioned of year in which TDS credit is to be claimed.
- As per new provision credit of TDS available irrespective of year to which it relates.

Ref: *Sadbhav Engineering Ltd. Vs. DCIT ITA Nos. 610/Ahd/2008*

ACIT, Vijayawada Vs. Assessee on 3 March, 2011, ITA/324/V/09

Credit of TDS not claimed in Return of Income

- ❖ Sec 155(14) on TDS credit self-contained; Appellate Authority empowered to consider revised return in the case of Desein Pvt. Ltd (ITAT Delhi Bench) dt.13/12/2013.
- ❖ TDS Credit must be given to the assessee from whose income such tax was deducted-Gloric Investments Ltd. vs. Deputy Director of Income Tax (International taxation)-ITA No. 1453/Del/2006 (ITAT Delhi Bench)



Contd'

- ❖ CIT Vs Digital Global Soft Ltd (2011) 203 Taxman 98 - Refund claimed through an application u/s 154 to the extent of TDS certificates not in possession at the time of filing return of income is not erroneous or prejudicial to the Revenue

Reimbursement of Expenses

- ❖ Reimburse of Charges paid to Clearing & Forwarding Agent:
No TDS to be deducted on same.

Ref:

CIT Vs. Gujarat Narmada Valley Fertilizers Company Ltd. ITA No. 315 (2013) (Guj)

Dr. Willmer Schwabe India(Pvt) Ltd.:03 SOT 71 (Del)

Grandprix Fab(Pvt) Ltd. :34 DTR 248(Del)

ISE Securities & Services Ltd: ITANo.6391 /mum/2009
(Actual reimbursement from dt.30.12.2011 group concerns)

No TDS on Service Tax

CBDT Circular No. 1/2014

in F. No.275/59/2012-IT(B), Dt: Jan 13, 2014

“.....wherever in terms of the agreement/ contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.”

Section 194C

Payment to Contractors

❖ Meaning of the words “any work”

- Not restricted to works contract, therefore has wide import and covers ‘any work’. Associated Cements Co. Ltd. vs. CIT 201 ITR 435(SC)
- “Any work” does not mean professional services are also included. CITC vs. CBDT 209 ITR 660 (Bom)
- “Any work” has wider imports after the Supreme Courts decision, however, it is not unqualifyingly wide to cover “each and every work”. East India Hotels Ltd. vs. CBDT 223 CTR 133 (Bom)
- “Work” is different from “service”. In work, the activity is predominantly physical, it is tangible. In service, activity is predominantly intellectual or at least mental. S.R.F. Finance Ltd. vs. CBDT 211 ITR 861 (Del)



S.194-H - Commission or Brokerage

- ❖ **Commission or Brokerage** includes payment received/receivable directly or indirectly by a person acting <as agent> on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities

❖ EXCLUDES

- Insurance Commission covered u/s 194D
 - Brokerage/commission on transactions relating to securities as defined in S. 2(h) of SCRA
- ❖ Exempts commission/brokerage payable by BSNL/MTNL to PCO franchisees
- ❖ Threshold - Rs.5,000 per annum

Commission or Brokerage

- Discount allowed to licensed stamp vendors – Does not fall within the expression "commission" or "brokerage" under s. 194H

Ref: CIT Vs. Ahmedabad Stamp Vendors Assoc (2012) 25 Taxman.com 2012 (SC)

- Net receipt by the franchisees is commission in nature and not discount

Ref: ACIT Vs. Bharati Cellular (2007) 105 ITD 129 (Kol)

- No TDS on Sales Promotion

Ref: CIT Vs. Intervet India Pvt. Ltd. (Bombay High Court) Appeal No: 1616 of 2011 dt. 01.04.2014

Commission or brokerage

Credit Card Payments

Ref: Vah Magna Retail (P). Ltd.

ITA No.905/Hyd/2011 Dt.10/04/2012

Notification No. 56/2012 dated:31/12/2012

Under section 197 (1F)

Following payments made by person to banks,
excluding foreign bank;

bank guarantee commission, cash management
service..... ,credit card and debit card
commission.

W.E.F. 01/01/2013.

Section 194J

Fees for professional or technical services

- ❖ Any person..... responsible for paying to a resident any sum by way of-
- ❖ (a) fees for professional service, or
- ❖ (b) fees for technical services, [or]
- ❖ [(ba)] any remuneration or fees or commission by whatever name called, other than those on which tax is deductible u/s. 192, to a director of a company, or]
- ❖ (c) royalty, or
- ❖ (d) any sum referred to in clause (va) of section 28,]



Contd'

Explanation-

(b) “ fees for technical services” shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

[(ba)] “royalty” shall have the same meaning as in explanation 2 to clause (vi) of sub-section (1) of section 9;



Payment of transaction charges, VSAT charges, etc. paid by Stock broker to Bombay Stock Exchange and National Stock Exchange .

kotak Securities Ltd. 62 DTR 339 (Bom)

Bharti Cellular Ltd. 44 DTR 190(SC).

Skycell Communiication Ltd. 251 ITR 53 (Mad)

Glaxo Smithkline 12 SOT 221 (Del)

Payment on Transfer of Certain Immovable Property... S. 194 IA

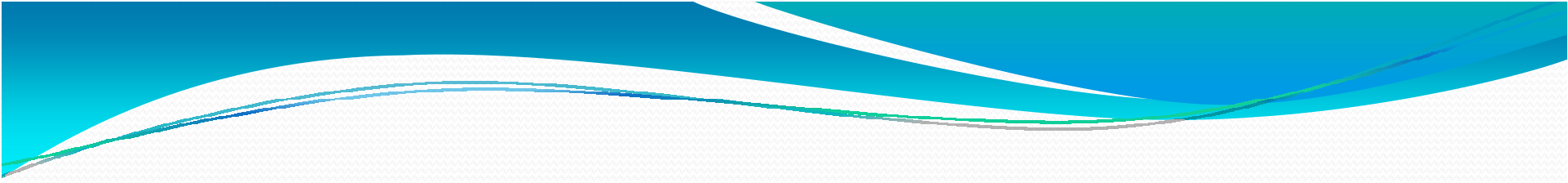
- ❖ Introduced w.e.f 01.06.2013
- ❖ Obligation to deduct tax at source is on the purchaser of any immovable property.
- ❖ Purchaser may be any person.
- ❖ Residential Status of purchaser/transferee is immaterial
- ❖ In case of joint transferee each co-owner could be liable
- ❖ Seller/ transferor should be resident.
- ❖ Immovable property could be stock-in-trade of the developer.

Contd'

- ❖ Immovable property could be located in India or Outside India.
- ❖ Tax is required to be deducted @ 1% of such sum.
- ❖ If the seller/ transferor does not provide PAN than @ 20%
- ❖ Tax with reference to consideration and not with reference to valuation as done by stamp duty valuation authority
- ❖ Tax deductible even in case where the transferor is entitled to exemption u/s. 54, 54EC, 54F
- ❖ Failure to deduct tax will attract interest and penalty. However provisions of Sec 40(a)(ia) will not get attracted

Issues

- ❖ When consideration is in Kind?
- ❖ Does VAT and Service Tax form part of consideration?
- ❖ Threshold - qua payee ?
- ❖ Importance of PAN
- ❖ Whether Tenancy property, F.S.I. and T.D.R. to be included?
- ❖ Will transaction entered prior to 01/06/2013 but payment made after 01/06/2013 be covered?



Law prevailing at the time of amount credited (being earlier date) considered and not the law prevailing at the date of payment. Even where some payments made subsequent to amendment, no obligation to deduct tax where payments were not liable to TDS qua earlier law. Royalty and Non-compete fees not covered u/s. 194J prior to 13th July, 2006.

Wifi Networks Pvt. Ltd. Bangalore ITAT [TD- 282-ITAT-2013]



Thank You..