

Recent Issues on
TDS....

Consequence of Default

➤ An Assessee in Default:

❖ Explanation to section 191:

For the removal of doubts, it is hereby declared that if the deductor does not deduct, or after deducting fails to pay, or does not pay, the whole or any part of the tax, where the assessee has also failed to pay such tax directly, then, such person shall be deemed to be an assessee in default within Section 201(1), in respect of such tax.

❖ **Deductee has Paid the Taxes on Related Receipts**

- Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CIT. 293 ITR 226 (SC)
- Bharati Cellular Ltd. Vs. The Commissioner of Income Tax 44 DTR 190
- Circular No. 275/201/95-IT(B) dated: 29/01/1997
- Rule 31ACB provides that the certificate from an accountant shall be furnished in Form 26A.
- ❖ **Due to Loss, Deductee has no Tax Liability**
 - ITO Vs. Owen D'souza 116 Taxman 28(mum)(mag)
 - Thomas Muthot Vs. Dy. CIT 28Taxman.com 25(coch.)

❖ **Taxes Presumed to Have Been Paid as the Deductee is a Government Undertaking:**

- CIT Vs. Trans Bharat Aviation (P) Ltd. 320 ITR 671 (Del.)

❖ **Short Deduction on Account of Bonafide Belief:**

Deductor was under bonafide belief that the conveyance allowance was exempt u/s.10(14)

- CIT Vs. ITC Ltd.263 CTR 241 (All)

Section 40(a)(i)/(ia)

Amounts not deductible under the head
“Profits and gains of business or Profession”
(ia)” any interest, commission or brokerage, rent,
royalty, fees for professional services
payable to a residents, or amounts **payable** to a
contractor..... on which **tax is deductible** at
source under Chapter XVII-B and **such tax has
not been deducted** or after deduction, has not
been paid on or before the due date specified in
section 139(1).”

Contd'

Section 40(a)(i)/(ia)

Expenditure paid during the Financial Year on which tax is not deducted, whether disallowance of expenditure is called for?

CIT Vs. Md. Jakir Hossain Mondal (Cal.) ITAT No. 31 of 2013

CIT Vs. Crescent Export Syndicate (Cal.) ITAT No. 20 of 2013

Sikandarkhan N. Tunvar (Guj.)

Merilyn Shipping & Transports P Ltd.

ITANo.477/Viz/2008 (Sp. Bench) Dt:22.03.2012

Vector Shipping Services P.Ltd. (2013) 85 CCH 201(All.)

SLP dismissed by the S.C. 357 ITR 642

Contd'

- Short deduction

Whether the amount to be:

- a) Fully disallowed
- b) Proportionately disallowed
- c) No disallowance

- Ref: S.K. Tekriwal (Kol.) 48 SOT 515 (Kol.)

Approved by Calcutta H. C 260 CTR 73 .

Chandabhoy & Jassobhoy 49 SOT 448(Mum)

Sunbell Alloys Co. of India Ltd.(Mum)

- ❖ Genuine and bonafide belief that no tax is to be deducted

ref: Kotak Securities Ltd. (Bom) ITNo.3111 of 2009

(2012) 340 ITR 333

Contd'

❖ **First proviso** to section 40(a)(i)/ (ia) inserted by the Finance Act 2010, from 01/04/2010 whether applicable retrospectively?

- Held No

Ref: Bharati Shipyard Ltd. Vs. DCIT 11 ITR 599 (Mum)(SB)

- Held Yes

Ref: CIT Vs. Virgin Creations (Cal) (itatonline.org)

CIT Vs. Naresh Kumar (2013) 86 CCH 035 (Del HC)

Rana Builders Vs. ITO (2013) 142 ITD 205 (Rajkot)

B.M.S Projects Vs. DCIT (2013) 143 ITD 645 (Ahd)

Contd'

❖ **Second proviso** to section 40(a)(i)/ (ia) inserted by the Finance Act 2012, from 01/04/2013 whether applicable retrospectively?

- Held No

Ref: The Income Tax Appellate Tribunal Cochin Bench, Cochin ITA No 361/Coch/2012

- Held Yes

Ref: Rajeevkumar Agarwal Vs. Addl CIT (2014) 149 ITD 363, 40 CCH 304 (Agra)

INTEREST U/S. 201(1A)

- ❖ The payment of interest is mandatory.
- ❖ There is no question of the waiver of payment of interest on the basis that the default was not intentional or on any other basis such as payment of tax subsequently.
- ❖ Interest paid u/s. 201(1A) is not deductible as business expenditure.

Fees for default in furnishing statements

- ❖ **Section 234E** : Levy of fee in case of delay in filing TDS or TCS statement:
 - Rs.200 per day but not exceeding amount of TDS
 - Before submitting TDS/TCS Statement
 - w.e.f. 01.07.2012
 - Constitutional validity of the provisions of section 234E of the Act are challenged before the High Courts
- Ref:
- Rashmikant Kundalia & Another Vs. Union of India & Other (2014) 89 CCH 041 (Mum HC).
- Ad-interim relief granted

Penalty u/s. 272B

- ❖ Incorrect or non furnishing of PAN of deductees by deductor:
 - As per provision of section 139(A) invites penalty u/s. 272B
 - Regardless of the numbers of default in each statement, maximum penalty of Rs. 10000/- can be imposed on the deductor.

Ref: CIT(TDS) Vs. DHTC Logistics Ltd. ITA 314 of 2013 Dt. 26.07.13 (Del)

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?**

Ref: Smt Varsha G. Salunke Vs. Dy CIT

98 ITD 147 (Mum) (TDS)

Pradeepkumar Dhir Vs. ACIT 109 TTJ 445 (Chd) (TM)

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

3 March, 2011 ITA/324/V/09

- What if income is not assessable (e.g. Assessee follows project completion method.) ?

Ref: Toyo Engineering India Ltd. Vs. JCIT
100 TTJ 373 (Mum)

- Whether sec. 198 applies even if income not recd?

Ref:

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

Supreme Renewable Energy Ltd. Vs. ITO
124 ITD 394 (Chennai)

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

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.”

Reimbursement of Expenses (194C)

- ❖ 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: ITA No. 6391 /mum/2009

(Actual reimbursement from dt. 30.12.2011 group concerns)

Rent u/s. 194I

- ❖ Payment towards lease premium and additional Floor Space Index (FSI) charges not subjected to TDS.

Ref: Asst. CIT(TDS) Vs. Oil and Natural Gas Corporation Ltd. ITAT 'C' Bench, Mumbai.

- ❖ Land used for parking aircraft.

Ref: United Airlines Vs. CIT (2006) 287 ITR 455 (Del)

Japan Airways Ltd. Vs. CIT 92TTJ 687 (Del)

- ❖ Amount paid to hotels for rooms occupied.

Ref: Krishna Oberoi Vs. Union of India (2002) 257 ITR 105 (AP)

East India Hotels Ltd. Vs. CIT 233 CTR 133

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.

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- ❖ 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.

Issues

- ❖ When consideration is in Kind?
- ❖ Does VAT and Service Tax form part of consideration?
- ❖ Threshold - qua payee ?
- ❖ Importance of PAN

Thank You..