



ISSUES ON TDS

23.01.2016

CA M B SANGHVI

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Section 192 : Salary

Commission to Managing Director

- Commission to Managing Director as fixed percentage of profit.
- Accrual of commission in the year of approval in Board Meeting held next year.
- Therefore TDS also to be effected in the subsequent year.

CIT Vs. R. Lakshmi Narayan 202 CTR 125 (Mad)

Sec. 192 vs. Sec. 194J

❖ Consultant Doctors engaged by Hospitals

- CIT Vs. Apollo Hospitals International Ltd (2013) 359 ITR 78(Guj HC)
- DCIT Vs. Yashoda Super Speciality Hosp. (2010) 29 CCH 544(Hyd Tri)
- Ivy Health Life Science (P) Ltd. 20 ITR (Trib.) 179 Chandigarh.

Section 194A : Interest other than “Interest on Securities”

- ❖ **Interest on FDR's, made in the name of the Registrar General of Court or the depositor of the fund on the directions of the court, will not be subject to TDS.**

*Ref: “Circular No.23/2015 in F.no. 279/Misc./140/2015-ITJ
dt.28.12.2015”*

- ❖ **Interest component on Decree.**

Once a decree is passed, it is a judgement & order of Court which has to be discharged only on payment of amount due.

No liability of TDS on interest component in decree.

Madhusudan Shrikrishna Vs. Emkay Exports 188 Taxman 195(Bom)
Akbar Abdul Ali Vs. Additional CIT (2012) 146 TTJ 57 (Mum) (UO)

Section 194H : Commission or Brokerage

- ❖ Discount allowed to licensed Stamp vendors – Does not fall within the expression “commission” or “brokerage” under sec. 194H.
CIT Vs. Ahmedabad Stamp Vendors Assocn. (2012) 348 ITR 378 (SC)
- ❖ Net receipt by the franchisees is commission in nature and not discount.
Bharti Cellular Ltd. v. ACIT, . [2013] 354 ITR 0507 (Cal.)
Vodafone Essar Cellular Ltd. vs. ACIT[2011] 332 ITR 0255 (KER.)
- ❖ No TDS on Sales Promotion
CIT Vs. Intervet India Pvt. Ltd. (2014) 364 ITR 238 (Bom)

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: Japan Airways Co. Ltd. Vs. CIT (2015) 377 ITR 0372(SC)

- ❖ Amount paid to hotels for rooms occupied.

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

The East India Hotels Ltd. Vs. CBDT (2010) 320 ITR 0526

Payment on transfer of certain immovable property other than agricultural land u/s. 194IA

- ❖ Amount paid before the provision coming into effect

Ref: Shubhankar Estates Private Limited vs. The Senior Sub-Registrar, The Union Bank of India and the Chief Commissioner of Income-tax, Writ Petition No.57385/2013(Kar HC dt.03.06.2015)

- ❖ Applicability to a transaction of transfer by way of an exchange and/or where the considerations is in kind

Ref: CIT vs. Chief Accounts Officer, Bruhat Bangalore Mahanagar Palike(BBMP)(ITA No. 94 of 2015 and ITA No. 466 of 2015; order dated 29.09.2015) Karnataka HC

- ❖ Applicability to rights in land or building or to reversionary rights

Rate at which Tax is to be deducted

As per provisions of Sec.90(2), Rate either of (a) or (b) whichever is beneficial to the Non - Resident Payee shall apply

(a) At the rate prescribed in the relevant Finance Act + SC+EC at the applicable rate

OR

(b) At the rate prescribed in the relevant DTAA

Section 206AA(1)

Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely: –

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.

Section 206AA is also applicable to payments made to non residents payee in case of failure to furnish PAN to the payer.

WHETHER PROVISIONS OF SECTION 206AA WILL APPLY OR SECTION 90(2) WILL APPLY ?

- ❖ Bosch Ltd vs ITO (2013) 88 DTR 0311(Bangalore ITAT)
- ❖ Serum Institute of India Ltd (2015)40 ITR 0684(Pune ITAT)
- ❖ Smt. A. Koushalya Bai vs Union of India (Kar HC) 346 ITR 156.

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)
- CIT vs. Bharati Cellular Ltd. 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).”

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

❖ 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 361 ITR 432 .
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

❖ **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 (2014) 326 ITR 256 (Del HC)

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

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

❖ **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) 34 ITR
0479(Agra Tri)

- ❖ W.e.f 01/04/2015 Proviso to Section 40(a)(ia) has been inserted which states:

Provided that where tax has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1), **thirty percent** of such sum shall be allowed as a deduction in computing the income of the previous year in which tax has been paid.

- ❖ W.e.f 01/04/2015, no disallowance shall be made under Section 40 (a)(i) if tax is deducted and deposited by the due date of filing the Return of Income .

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.
 - Whether interest charged u/s.201(1A) should be for a period of 30 days as a month or British calendar month?

Ref: M/s. Navayuga Quazigund Expressway(P)
Limited vs. DCIT (Hyd Tri) ITA
No.1651/Hyd/14

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. (2012) 33 CCH 0698 (Del Tri)

Credit of T.D.S.

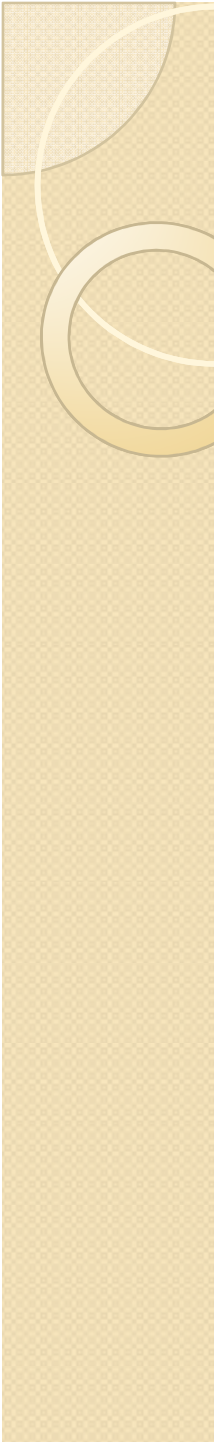
Rule for allowing credit for TDS for the purpose of section 199.

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 .

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- ❖ **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?

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.

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.) ?

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

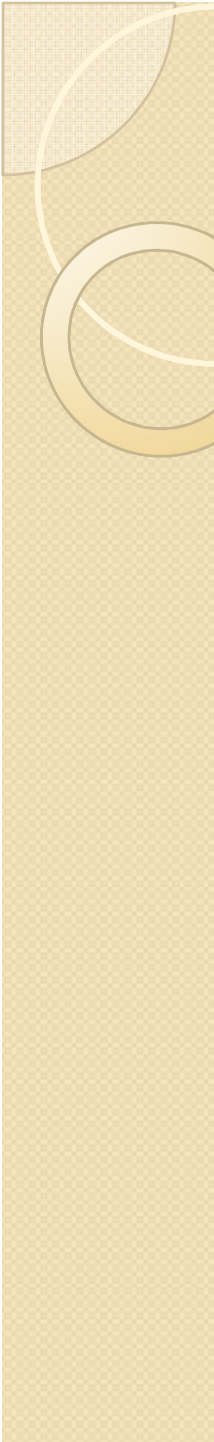
- ❖ Whether sec. 198 applies even if income not recd?

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)

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- ❖ 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.”

CBDT Notification No.4/2015

In F No.: DGIT(S) /CPC(TDS)/DCIT/15GH/2015-16/14425-556,

Dt: December 01, 2015

Simplification of procedure for Form No.15G & 15H

- 1.Furnishing and verification of the electronic declaration
2. Allotment of Unique Identification Number
 - 2.1 UIN shall consist of the following three fields:
 - i. Sequence Number(10 alphanumeric for form 15G/H)

ii.) UIN shall consist financial year for which declaration is being furnished

iii.) TAN of payer

2.2 Paper declaration should be digitized by the payer and the same shall bear sequence number out of the same" running sequence number(Field 'a' of UIN) series", as used for online submission.

2.3 UIN running sequence number series shall be reset to 1 in case of each TAN of the payer at the start of each F.Y.

3. Furnishing or making available the declaration to the income tax authority:

3.1 Payer will upload, the 15G and 15H declarations(digitized / electronic) on the e-filing site (www.incometaxindiaefiling.gov.in)

3.2 Payer shall quote "sequence number" in quarterly TDS statement against the transaction covered under 15G/H declaration irrespective of the fact that no tax has been deducted in the said quarter.

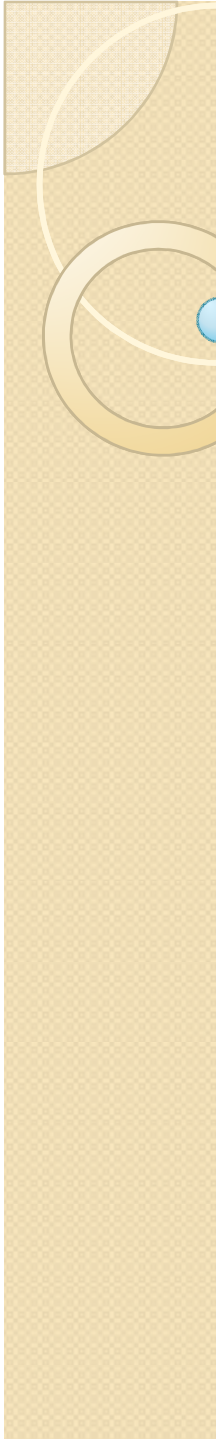


4.Reconciliation Mechanism

4.1 Payer will be responsible for reconciliation of the allotted UINs vis-a vis reported UINs to the ITD through reporting in quarterly statement as well as through upload of declarations on quarterly basis.

4.2 Payer shall file exceptional report for the following UINs:

- a) UINs not reported in TDS statements
- b) UINs not uploaded on ITD website.



THANK YOU