



Important Judgment's on TDS

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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)

- No interest u/s 234B and 234C to be levied where Income is by way of Salary u/s. 192.
 - Peter Morris Vs. ACIT (TDS) 389 ITR 501 (SC)

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 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)

- ❖ Payment of 15% retained by advertising agency is commission paid by Prasar Bharati Doordarshan Kendra and is covered by provisions of Section 194H

The Director, Prasar Bharati VS Commissioner of Income Tax (2018) 403 ITR 161 (SC)

Rent u/s. 194I

- ❖ Payment towards lease premium is not subjected to TDS.
Ref: Rajesh Projects (India) P. Ltd & others V. C.I.T. (TDS)
(2017) 392 ITR 483 (Del HC)
- ❖ Land used for parking aircraft.
Ref: Japan Airways Co. Ltd. Vs. CIT (2015) 377 ITR 0372(SC)
- ❖ Compensation paid for alternate accomodation
TDS not required to be deducted.
Ref : Sahana Dwellers (P.) Ltd. Vs. ITO (2016) 67 taxmann.com 202
(Mum)

Certificate u/s.197

- Statutory provision of tax deduction at source at lower rate is “person specific” and not “sum specific”

Kolkata ITAT in case of Twenty First Century Securities Ltd (2017) 163 ITD 270 after referring provision of Sec. 197(2) and Rule 28AA(2) concluded

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)
- ❖ Quick Flight Limited vs. ITO ITA No.1204/ Ahd/2014 Dt. 04.01.2017
- ❖ Nagarjuna Fertilisers & Chemicals Ltd. & Anr ITA No. 1187/H/2014 Dt: 13.02.2017 (Hyd.)(Sp. Bench)
- ❖ Danisco India P. Ltd. Vs Union Of India (2018) 404 ITR 0539(Del HC)
- ❖ Smt. A. Koushalya Bai vs Union of India (Kar HC) 346 ITR 156.

Whether assessee held to be liable to deduct TDS on subsequent amendment's made?

❖ ACIT & Anr. Vs. SDV International Logistics Ltd & Anr. (2018) 172 ITD 0505 (Kol Tri)

- Assessee cannot be held to be liable to deduct tax at source by relying on subsequent amendments made in relevant provision with retrospective effect.

❖ **Assessee is not liable to deduct TDS on payments made on behalf of its clients which were reimbursed to it**

- KGL NETWORK (P) LTD. vs. ACIT (2018) 53 CCH 298
(Del Tri)

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.)

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

❖ 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
CIT Vs. ITC Ltd.263 CTR 241 (All)

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)

Whether 234E can be levied after one year from end of financial year in which the related TDS statement is filed ?

- ❖ NIMABEN RAMESHBHAI THAKKAR vs. DCIT (2018) 63 ITR 649 (Ahm Tri)
- ❖ SIBIA HEALTHCARE (P) LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (2016) 46 ITR 453 (Amritsar Tri)

234E: Whether 234E is chargeable if TDS returns u/s 200A are processed prior to 01.06.2015

❖ Favour:

DHARAM DEEP PUBLIC SCHOOL & ANR. vs. DCIT & ANR.
(2018) 52 CCH 16 (Del Tri)

SREE AYYAPPA EDUCATIONAL CHARITABLE TRUST vs.
DCIT & ANR. (2018) 301 CTR 150 (Kar HC)

❖ Against:

RAJESH KOURANI vs. UNION OF INDIA & 4 (2017) 99
CCH 98 (Guj HC)

PROSECUTION

- **Section 276B relating to Failure to pay TDS deducted to the credit of Central Government.**
- Prosecution can be initiated under this section, in case where a person fails to pay the TDS deducted to the Government Treasury as per the provisions of Chapter XVII Part B.
- If there is **reasonable cause** for failure to deposit the said TDS deducted, no prosecution shall be initiated. [Section 278AA].
 - Sonali Autos Pvt Ltd. vs. State of Bihar (2017) 396 ITR 636 (Patna HC)
- CBDT Guidelines on compounding of Offences dated 23/12/2014.



THANK YOU