



## **Pick up and drop transport facility provided to employees - Not a taxable perquisite**

### **Background**

The Income-tax Appellate Tribunal, Mumbai<sup>1</sup> has held that pick up and drop transport facility provided to employees should not be considered as taxable perquisite in the hands of the employees.

### **Facts of the case**

- M/s Transworks Information Services Ltd ('the company') was carrying on the business of information technology enabled services, call centers and BPO industries.
- The company paid conveyance allowance of Rs.800 per month to its employees.
- The company also provided bus service facility for picking up and dropping employees. The said facility was provided from nearest railway station to office and vice versa during the day and from residence to office and back during the night.

### **Issues before the Tribunal**

- Whether expenditure incurred by the company on such transport facility provided to the employees should be treated as perquisite in their hands.
- Whether the company was 'assessee in default'<sup>2</sup> for non-deduction of tax at source on such perquisite?

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<sup>1</sup> Transworks Information Services Ltd vs Income-tax Officer (TDS)  
IT Appeal No. 1192 (MUM) of 2007

<sup>2</sup> Section 201

- On account of non-deduction of tax at source, whether interest<sup>3</sup> under the Income-tax Act, 1961 ('the Act') should be charged?

#### **The company's contention**

- The conveyance allowance of Rs.800 per month given to all employees was not taxable as income in the hands of employees by virtue of the specific exemption<sup>4</sup> allowed under the Act. Accordingly, the company was not liable to deduct tax at source on the same.
- As regards transport facility, though the same is a benefit in the hands of employees, it is specifically exempt under the Act<sup>5</sup>.
- The company also contended that the transport facility cannot be attributed as income in the hands of individual employees, as the same is enjoyed collectively by the employees. The expenditure incurred on the transport facility cannot be clubbed with the conveyance allowance. Accordingly, the company was not liable to deduct tax at source on the same.

#### **The Assessing Officer's (AO) decision**

- The conveyance allowance and the expenditure incurred by the company on the transport facility were perquisites in the hands of the employees. Therefore, the company was liable to deduct tax on such perquisites.
- On account of non-deduction of tax on such perquisites, the company was treated as 'assessee in default' under the Act and further, interest was charged under the Act.

#### **The Commissioner of Income-tax (Appeals) [CIT(A)] decision**

- The employees of the company enjoyed double benefits - one by way of conveyance allowance in cash and other by way of the transport facility.
- An exemption in respect of conveyance allowance cannot be allowed if free conveyance is provided by the employer.
- The exemption section under the Act is worded in an unambiguous manner which conveys that tax payer can avail exemption either of the special (conveyance) allowance or the benefit and not of both

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<sup>3</sup> Section 201(1A)

<sup>4</sup> Section 10(14)(i)

<sup>5</sup> Explanation to section 17(2)(iii): For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;]

simultaneously.

- In the instant case, the benefit of transport facility provided over and above the conveyance allowance (exempt upto Rs.800 per month), is income in the hands of the employees. Accordingly, the company was required to deduct tax at source on the expenditure incurred on the transport facility.

#### **The Tribunal's decision**

- On account of the specific Explanation provided in the Act which does not consider employer provided vehicle to employees from residence to office and back as perquisite, the transport facility provided by the company to the employees cannot be considered as a taxable perquisite in the hands of the employees.
- Also, it is not possible to compute the value of transport facility attributable to each of the employee since it is in the nature of composite service collectively provided to the employees throughout the year. This collective transport benefit was not even taxed as salary or as fringe benefit even after the introduction of the the Fringe Benefit Tax Regime.
- In view of the above, no tax is required to be deducted at source on the expenditure incurred by the company on transport facility. Accordingly, the company cannot be treated as 'assessee in default' and no interest should be charged under the Act.

#### **Our Comments**

This ruling highlights that pick up and drop transport facility provided to employees should not be considered as a taxable perquisite in the hands of the employee.

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