



TDS provisions are not applicable where the taxpayer has not claimed any expenditure and made a suo-motu disallowance under Section 40(a)(ia) of the Income-tax Act

Background

Recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Destimoney Enterprises Limited¹ (the taxpayer) dealt with a case where the taxpayer created a provision for lease rent and did not deduct tax at source on the same. The taxpayer disallowed such expenditure while filing the return of income. The Tribunal held that the tax deduction provisions are not applicable where there is no claim of expenditure made by the taxpayer and the taxpayer has made a suo-motu disallowance under Section 40(a)(ia) of the Income-tax Act, 1961 (the Act).

Facts of the case

Non-applicability of Tax Deduction at Source (TDS) provisions

- A survey under Section 133A of the Act was carried out at the business premises of the taxpayer during which certain discrepancies were found in the deduction of tax at source
- The Assessing Officer (AO) found that the taxpayer has not deducted tax at source on INR2,83,91,800 on account of provisions for rent which were charged to a profit and loss account.
- The AO also observed that in the tax audit report bearing form No. 3CD, it is stated that the taxpayer declared inadmissible expenses under Section 40(a)(ia) of the Act on account of rent of INR2,83,91,800.

- The taxpayer contended that it has not paid actual rent but only created provisions towards rent which was never paid due to pending litigation with the landlord and the taxpayer suo motu disallowed the same while filing the return of income under Section 40(a)(ia) of the Act.
- The AO rejected the contentions of the taxpayer by holding that the taxpayer was liable to deduct tax under Section 194-I of the Act and treated the taxpayer as assessee in default under the provisions of Section 201 and 201(1A) of the Act and raised demand of TDS plus interest.

TDS on internet charges and lease line charges

- During the course of the assessment proceedings, the AO observed that the taxpayer paid lease line charges and internet charges to Advance Technologies Ltd on which tax under Section 194-I of the Act has not been deducted.
- Accordingly, the AO(TDS) issued notice to the taxpayer. The taxpayer contended that the payment was for the internet connection and not for use of any plant or equipments and therefore the TDS provisions were not applicable.
- However, the AO treated the taxpayer as assessee in default and raised the demand of tax and interest.

¹ Destimoney Enterprises Limited v. ITO(TDS) [ITA NO.4124 & 4125/Mum/2015] - Taxsutra.com

- The Commissioner of Income-tax (Appeal) [CIT(A)] held that the provisions of TDS under Section 194-I of the Act were applicable on the lease/internet charges.

Tribunal's ruling

Non-applicability of TDS provisions

- The provision of TDS are not applicable where there is no claim of expenditure made by the taxpayer and the taxpayer has made suo-motu disallowance under Section 40(a)(ia) of the Act.
- There is merit in the contentions of the taxpayer that it has already made suo motto disallowance under Section 40(a)(ia) of the Act at the time of filing the return of income and paid income tax accordingly without claiming any expenditure of lease rent on the grounds that the provisions were of contingent nature and were never ever paid.
- The Tribunal held that the provisions of Section 194-I of the Act are not applicable where the taxpayer has not claimed the deduction of the expenditure by suo motu making the disallowance under Section 40(a)(ia) of the Act.

TDS on internet charges and lease/internet charges

- The taxpayer was only availed the internet connection and was not using any asset, plant or machinery which involved payment of rent.
- Lease/internet charges are only the payment for use of internet connection and these are not falling within the provisions of Section 194-I, 194-C and 194-J of the Act.

Our comments

The Bangalore Tribunal in the case of IBM India Private Limited² observed that the taxpayer has debited the expenses to the profit and loss account and the provisions are credited to a provision account and not to the vendor accounts as these are not yet due for payment. The taxpayer did not deduct the tax at source on such provisions. While filing return of income, the taxpayer disallowed the amounts in the computation of income in terms of Section 40(a)(i) and (ia) of the Act. The Tribunal held that it is clear from the statutory provisions of TDS that the liability to deduct tax at source exists when the amount is credited to a 'suspense account' or any other account by whatever name called, which will also include a 'provision' created in the books of accounts.

However, the Mumbai Tribunal in this case has held that TDS provisions are not applicable where there is no claim of expenditure made by the taxpayer and the taxpayer has made suo-motu disallowance under Section 40(a)(ia) of the Act.

It would be interesting to see the decision of the High Court if the tax department takes this case further.



² IBM India Private Ltd. v. ITO (ITA Nos.749 to 752IBang/2012) – Taxsutra.com

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