

TAX FLASH NEWS

26 September 2019



TDS credit is allowed in the year in which the corresponding income is assessable and not in the year of TDS deposit

Background

Recently, Pune Bench of Income-tax Tribunal (the Tribunal) in the case of Mahesh Software Pvt Ltd¹ (the taxpayer) allowed the credit of Tax Deducted at Source (TDS) in the year in which the corresponding income is assessable in the hands of the taxpayer. The Tribunal observed that since the income on which tax was deducted at source was assessable in the year under consideration, the benefit of the TDS should be allowed in the same year.

Facts of the case

- The taxpayer is engaged in the business of providing software services. During the Assessment Year 2011-12, the taxpayer raised an invoice (in March 2011) on which tax was deducted by the party. However, tax on the invoice amount was deposited in the succeeding year. The taxpayer claimed credit for Tax Deducted at Source (TDS) which was not appearing in Form No. 26AS.
- The Assessing Officer (AO) rejected the claim of the taxpayer relying on Rule 37BA(1)² of the Income-tax Rules, 1962 (the Rules).
- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO.

Contentions

The claim of the taxpayer was that the benefit of TDS should be allowed in the year in which the taxpayer has recorded the corresponding income. However, the tax department was contending that such benefit can be given only in the year of deposit of TDS.

Tribunal's decision

- The AO relied on Rule 37BA(1) for denying the benefit of TDS during the year under consideration. This Rule provides that the credit for TDS shall be given to the person to whom payment has been made or credit has been given on the basis of information relating to TDS furnished by the deductor. What is material for this rule is the beneficiary of credit for the TDS, being the person to whom payment has been made, which in the instant case is the taxpayer.
- The CIT(A), in addition, relied on Rule 37BA(4), which also provides that the credit for TDS shall be granted on the basis of information relating to TDS furnished by the deductor. How, this rule prejudices the claim of the taxpayer is anybody's guess.
- The information about the TDS by the deductor is not denied. Both the sub-rules simply provide for granting of the benefit of TDS.
- The point of time at which the benefit of TDS is to be given, is governed by Rule 37BA(3), which unequivocally provides that the credit for TDS shall be given for the assessment year for which such income is assessable.

¹ Mahesh Systems Pvt Ltd v. ACIT-ITA No.1288/PUN/2017

² Rule 37BA(1) of the Act – Credit for tax deducted at source and paid to the central government in accordance with provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority

- Thus, it is clear from the mandate of Rule 37BA(3)(i) of the Rules that the benefit of TDS is to be given for the assessment year for which the corresponding income is assessable.
- In the present case since the income on which tax was deducted at source, was patently assessable in the year under consideration, the Tribunal held that the TDS credit should be allowed in the same year, that is the year under consideration.

Our comments

The issue whether TDS credit is available in the year in which the income is assessable or in the year of deposit of TDS has been a subject matter of debate before Courts/Tribunal.

The Tribunal in the present case held that TDS credit should be given to the taxpayer in the year in which the corresponding income is assessable in the hands of the taxpayer and not in the year of deposit of TDS.

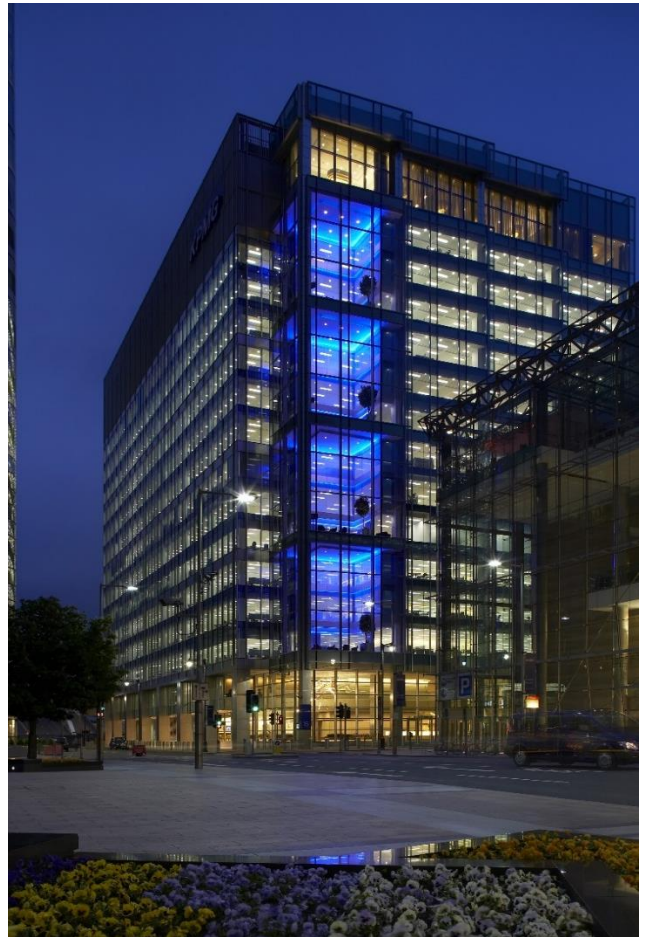
It is important to note that the Gujarat High Court in the case of Devarsh Pravinbhai Patel³ held that TDS credit needs to be given by the tax department to the deductee even if TDS is not deposited by the deductor.

The Central Board of Direct Taxes (CBDT) vide order⁴ directed that the taxpayers are not put at any inconvenience on account of default of deposit of tax into the Government account by the deductor.

This decision may help the taxpayers to claim the benefit of TDS credit in the year in which the income is assessable.

³ Devarsh Pravinbhai Patel v. ACIT (Civil Application No. 12965 of 2018) (Guj)

⁴ Order No. 275/29/2014-IT-(B), dated 1 June 2015



Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala,
Bengaluru – 560 071.
Tel: +91 80 3980 6000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000