

TAX FLASH NEWS

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Taxpayer is eligible for refund of TDS even when corresponding income from offshore supply is not taxable in India

Recently, the Bangalore Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of ABB AB¹ (the taxpayer) dealt with the issue of eligibility of Tax Deducted at Source (TDS) credit when the corresponding income is not taxable in India. The Tribunal observed that the amount received from offshore supply of equipment was not taxable in India; however, tax was deducted on such amount in India. Therefore, the taxpayer was eligible for refund of such TDS credit. The issue was restored back to the Assessing Officer (AO) for limited purpose to examine and verify the correctness of taxpayer's claim and to consider the ratio of judicial decisions referred by the taxpayer.

Facts of the case

The taxpayer is a non-resident company engaged in power and automation technologies for utility and industry customers. During the Assessment Year 2013-14, the taxpayer received payment for offshore supply of equipment and tax was deducted by the deductor and paid to the government. The taxpayer contended that payments received by the taxpayer for offshore supply of equipment was not taxable in India as the title in the equipment has passed on to the company outside India and the payments for offshore supply was received by the company outside India. Subsequently, the taxpayer filed its tax return and claimed a tax refund of TDS.

The AO held that source of income for offshore supply of equipment was in India and thus receipt was taxable in India. The AO applied the provisions of Section 1991 and concluded that credit for TDS can be given only

when the corresponding income was offered to tax. The AO denied the TDS credit claimed by the taxpayer. The AO was of the view that the offshore income was subject to tax in India and since it was not offered to tax in the year under consideration, TDS credit had to be deferred. The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO.

Tribunal's decision

The Mumbai Tribunal in the case of Arvind Murjani Brands Ltd.³ held that the tax credit should be allowed for TDS to the payee in the year for which such tax was deducted and paid to the government. It was observed that the amount of TDS needs to be adjusted against some tax liability of the payee and in case there was no such liability, it has to be refunded to the payee in line with Section 199.

Further, the Visakhapatnam Tribunal in the case Peddu Srinivasa Rao⁴ observed that when a particular income is received by the taxpayer after TDS and the TDS has been duly deposited with the government and the taxpayer has received the requisite certificate to this effect, then on production of the said certificate the taxpayer becomes entitled for the TDS credit. Such TDS credit will be available even if the taxpayer has not directly offered the said income for tax considering the same as not taxable. Accordingly, the Tribunal held that the taxpayer was entitled for credit of TDS.

¹ ABB AB v. DCIT (IT(I.T)A Nos.464/Bang/2018 & 2878/Bang/2019) – Taxsutra.com

² Credit for tax deducted - Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under section 203 in the assessment made under this Act for the assessment year for which such income is assessable

³ Arvind Murjani Brands (P) Ltd. v. ITO [2012] 137 ITD 173 (Mum)

⁴ ACIT v. Peddu Srinivasa Rao (ITA No.324/Vizag/2009, dated 3 March 2011)

Relying on the above decisions, the Tribunal observed that the lower authorities first needs to examine whether the amounts received from offshore supply contracts were received by the taxpayer outside India. The Tribunal observed that the AO has to quantify and examine the tax refund. Accordingly, the issue was restored back to the AO for limited purpose to examine and verify the correctness of claim and to consider the ratio of the decisions referred above.

Our comments

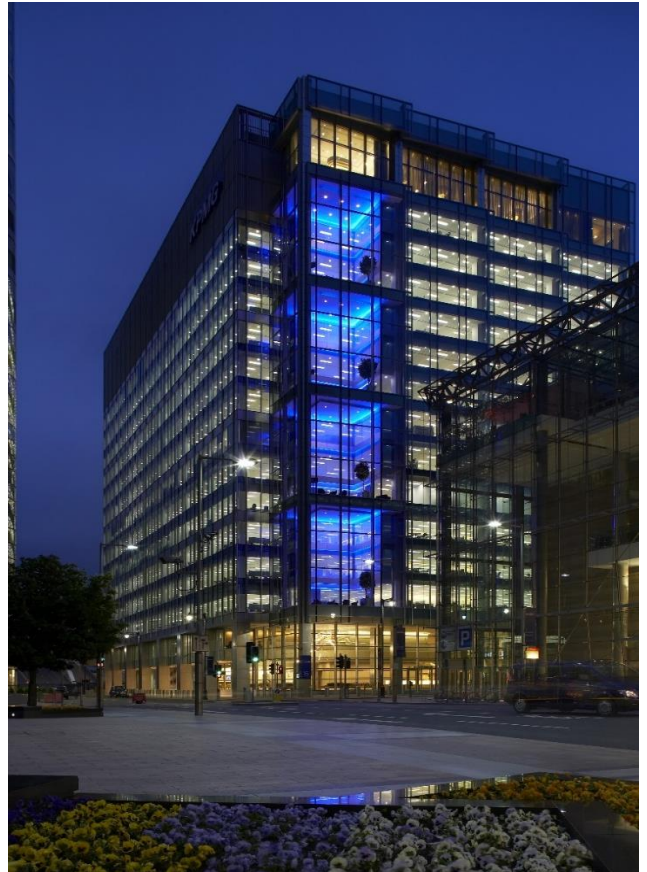
The Tribunal in the present case has held that the taxpayer is eligible for refund of TDS credit even when corresponding income from offshore supply contracts was not taxable in India. The Chennai Tribunal in the case of Supreme Renewable Energy Ltd.⁵ held that the taxpayer becomes entitled to TDS credit even if it had not directly offered the relevant income for tax on the basis that it was not liable to tax. Similarly, the Delhi Tribunal in the case of Lloyd Insulation (India) Ltd⁶ observed that Section 199 does not contemplate that there should be immediate nexus between the income as such and the TDS made out of a particular payment. TDS is a machinery provision for collecting tax on the potential income of the taxpayer. If at all such a nexus is required, such nexus is rather notional or conceptual, rather than specific or immediate.

Further, the Mumbai Tribunal in the case of Engineering India Ltd.⁷ observed that the TDS provisions are not charging sections or computation section unless and until it is followed by an assessment order making a charge of tax. The deduction of tax is not a levy of tax. It is not necessary that the receipts on which tax was deducted as per TDS certificate should be offered to tax in the same assessment year as per the dates mentioned in the TDS certificate.

⁵ Supreme Renewable Energy Ltd. v. ITO [2010] 124 ITD 394 (Chennai)

⁶ Lloyd Insulation (India) Ltd v. DIT (ITA No. 2400/Del/11)

⁷ Toyo Engineering India Ltd. v. JCIT [2006] 5 SOT 616 (Mum)



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