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TAX FLASH NEWS

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TDS threshold will apply to each joint owner of the property separately while deducting tax on the payment of rent

Recently, the Indore Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of M.P. Warehousing & Logistics Corporation[1] (the taxpayer) dealt with the issue of applicability of deduction of tax under Section 194-I of the Income-tax Act, 1961 (the Act) on rent payment to joint-owners of a property and to a government undertaking whose income is exempt. The Tribunal held that the taxpayer cannot be treated as an 'assessee in default' for short deduction of tax on rent payment to joint-owners since the taxpayer has rightly deducted, collected and paid the tax on share of the rent paid to each of the co-owners. Further the taxpayer cannot be treated as 'assessee in default' for non-deduction of tax at source on the rent payment to the government undertaking since the income of such undertaking was exempt under the Act.

Facts of the case

In the present case, the taxpayer is a state government undertaking, engaged in the work of storage and maintenance of warehouse for food grains procured by Food Corporation of India and other local agencies.

For Assessment Year 2011-12, the taxpayer was treated as 'assessee in default', for non-deduction of tax on rent paid to Krishi Upaj Mandi Samiti, Dhamnod & Khandwa and for short deduction of tax on rent paid to co-owners of Sadhna Enterprises. A Joint partnership agreement was entered between the taxpayer and co-owners of the warehouse, who jointly agreed to provide the immovable property to be held in joint names, under a common name, Sadhana Enterprises.

[1] M.P. Warehousing & Logistics Corporation v. ACIT (ITA No. 491/Ind/2019) – Taxsutra.com

Tribunal's decision

Payment of rent to co-owners

The rent was not paid specifically to Sadhana Enterprises but was paid to each of the co-owners as per its ownership share in the immovable property. The taxpayer had duly deducted the tax at source on the rent paid to the co-owners where the amount of rent exceeded the limit of INR 1,80,000 and in two cases where the amount was below the limit of INR 1,80,000 tax was not deducted.

Thus, the taxpayer should not be treated as 'assessee in default' for short deduction of tax on rent payment to Sadhana Enterprises since the taxpayer has rightly deducted, collected and paid the tax on share of the rent paid to each of the co-owners.

The tax department failed to bring any contrary material to prove that the total rent was paid to Sadhana Enterprises.

Payment of rent to government undertaking

The payee i.e. Krishi Upaj Mandi Samiti is a state government undertaking and its income is exempt under Section 10(26AAB). The Tribunal referred to the CBDT Circular[2] which was further modified by another CBDT Circular[3] where it was stated that tax is not required to be deducted since the income of such payee undertaking is exempt under the Act. Further, a Chartered Accountant had certified that the rental income received from the taxpayer was accounted for in the financial statements and the taxable income of

[2] CBDT Circular No. 4/2002, 16 July 2003 – Boards or Bodies whose income is unconditionally exempt under Section 10 of the Act and who are statutorily not required to file return of income as per Section 139, there would be no requirement for tax deduction at source since their income is anyway exempt under the Act

[3] CBDT Circular No.18/2017, 29 May 2017 - Funds or authorities or Board or bodies, by whatever name called, referred to in Section 10, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of income as per Section 139, there would be no requirement for tax deduction at source, since their income is anyway exempt under the Act

the ‘payee’ was ‘nil’. The Tribunal relied on various decisions[4] and held that the taxpayer should not be treated as ‘assessee in default’ for non-deduction of tax at source on the rent paid to Krishi Upaj Mandi Samiti.

Our comments

The issue with respect to the applicability of TDS provisions under Section 194-I vis-à-vis rent payment to joint-owners of a property and to the undertaking whose income is exempt under the Act has been a matter of debate before the Courts/Tribunal.

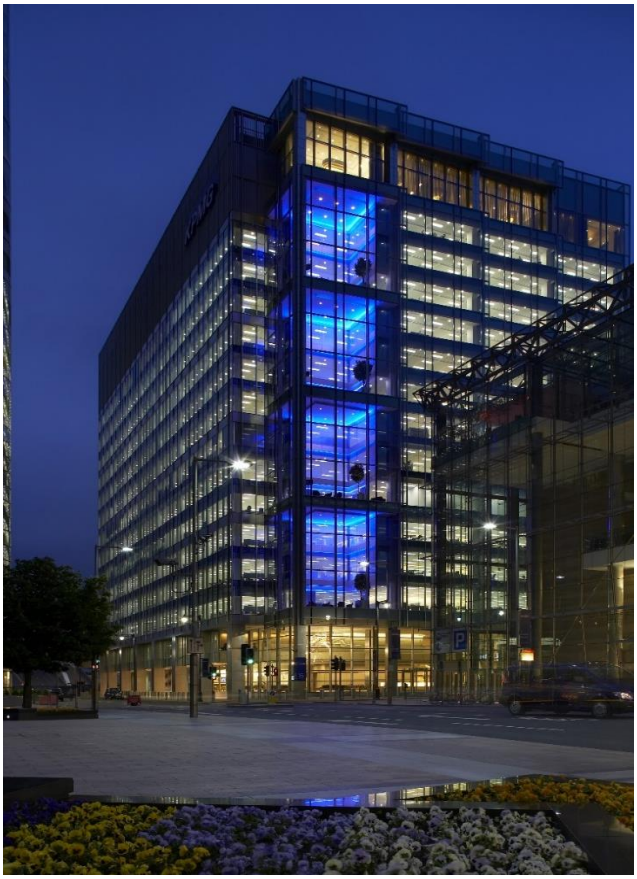
Some of the Courts/Tribunal[5] have held that where property in question leased out to a bank was owned by various co-owners and each owner was having a definite and ascertainable share in property, threshold limit for the purpose of deduction of tax at source under Section 194-I would apply to each of co-owners separately.

The Supreme Court in the case of Bijoy Kumar Almal[6] held that where a property is owned by two or more persons and their respective shares are definite and ascertainable, they shall not, in respect of such property, be assessed as an AOP and that the share of each such person in the income from that property shall be included in his total income, meaning thereby that the liability to deduct tax on rental income received by each co-owners, is to be ascertained separately.

However, Calcutta High Court in the case of Smt Bishaka Sarkar[7] held that rent paid to co-owners cannot be split up and co-owners would come within the expression ‘other cases’, so deduction of tax at the rate of 20 per cent was justified.

The Tribunal in the present case has held that the taxpayer cannot be treated as an ‘assessee in default’ for short deduction of tax on rent payment to co-owners since the taxpayer has rightly deducted, collected and paid the tax on the share of the rent paid to each of co-owners.

With respect to the deductibility of tax while making payment to undertaking whose income is exempt, the Chandigarh Tribunal in the case of State Bank of India[8] held that the payee being exempt under Section 10(23C)(iiiab) was not liable for TDS. Further, the CBDT circular[9] clarified that boards or bodies whose income is unconditionally exempt under Section 10 and who are statutorily not required to file return of income as per Section 139 are not liable for TDS as their income is exempt under the Act. The Tribunal in present case has also held on similar lines.



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[4] State Bank of Bikaner & Jaipur [2012] 19 taxmann.com 221 (JP), ITO v. the Secretary, Krishi Upaj Mandi Samiti (ITA No.342,343 & 344/JP/2013, dated 20 July 2015)
[5] CIT v. SBI [2012] 20 taxmann.com 40 (All), CIT v. State Bank of India [2009] 226 CTR 310 (Raj), Amalendu Sahoo v. ITO [2003] 264 ITR 16 (Cal), Orient Bank of Commerce v. TDS/TRO [2006] 99 TTJ 1235 (Chd)
[6] CIT v. Bijoy Kumar Almal [1995] 125 CTR 418 (SC)
[7] Smt Bishaka Sarkar v. Union of India [1996] 219 ITR 327 (Cal)
[8] ACIT v. State Bank of India (ITA No. 1084/Chd/2014)
[9] CBDT Circular No. 18/2017, dated 29 May 2017

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