

TAX FLASH NEWS

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Tax is not required to be deducted under Section 195 of the Income-tax Act on salary paid by an Indian entity to an overseas deputed employee

The Bombay High Court in the case of Supriya Suhas Joshi¹ held that no tax is required to be deducted under section 195 of the Income-tax Act, 1961 (the Act) on salary paid by an Indian entity to an overseas deputed employee even if the foreign entity exercised supervision and control over such employee.

Facts of the case

- The taxpayer is a sole proprietor of Radiant Services. The taxpayer had entered into an agreement with Arabi Enertech, a Kuwait based company for providing manpower as per requirements of such foreign company.
- The Kuwaiti company paid a fixed sum as a consideration to the taxpayer out of which the taxpayer paid remuneration to the deputed employee.
- The Assessing Officer (AO) was of the opinion that while making the payment to the employee, the taxpayer failed to deduct the tax at source under Section 195 of the Act.
- The taxpayer contended that the persons so employed worked in the employment of the taxpayer and were only loaned to the Kuwaiti company for carrying out the work as per the requirement of the said company.
- The Commissioner of Income-tax (Appeals) [CIT(A)] held that the taxpayer had employed the persons who had discharged the duties for Kuwaiti company. The taxpayer was in the process of making payment of salary and therefore, there was no requirement of deducting tax at source under Section 195 of the Act.

- The Income-tax Appellate Tribunal (The Tribunal) confirmed the view of the CIT(A).

High Court ruling

- The contract between the taxpayer and the Kuwaiti company was sufficiently clear and it gave all indications that the concerned person was the employee of the taxpayer.
- As per the contract, the taxpayer would supply commissioning engineer to the said company on deputation basis for its ongoing project. Such deputation would be on the terms and conditions mutually discussed between the taxpayer and the said company.
- The High Court relied on the decision of the Supreme Court in case of Ram Prashad².
- The test of the extent of control and supervisory of a person by the engaging agency are undoubtedly relevant factors while judging the question whether the person was an agent or an employee.
- However, in a situation where the person employed by one employer is either deputed to another or is sent on loan service, the question of dual control would always arise.
- In the instant case, the Kuwaiti company would enjoy considerable supervising powers and control over the employee as long as the employee is working for it. However, the taxpayer continued to enjoy the employer-employee relationship with the said person.

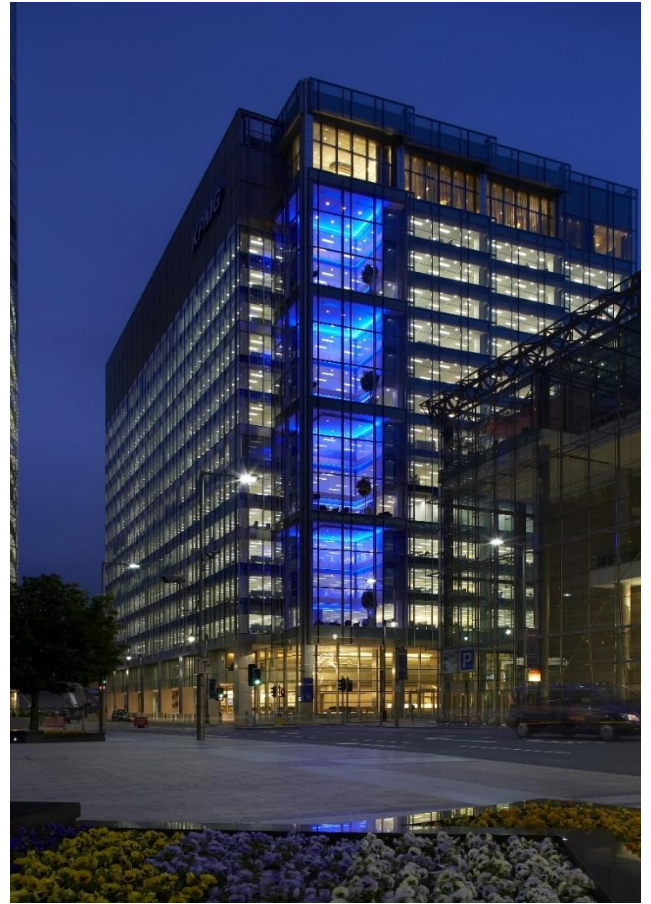
¹ CIT v. Supriya Suhas Joshi (ITA No. 382 of 2017) (Bom) – Taxsutra.com

² Ram Prashad v. CIT [1972] 86 ITR 122 (SC)

- Also if the work of such person was found to be wanting or if there was any complaint against him, as per the agreement, it would only be the employer company i.e. the taxpayer) who could terminate the service.
- Therefore, the High Court confirmed the view of CIT(A) and the Tribunal, which were of the opinion that there was no requirement of deducting tax at source under Section 195 of the Act.

Our comments

This is an important decision of the Bombay High Court where the issue was whether tax needs to be deducted under Section 195 on payment of salary by an Indian company to an overseas deputed employee. The Bombay High Court held that there was employer-employee relationship between the Indian company and the deputed employee even though the foreign entity had considerable supervisory powers and control over such employee. Thus the taxpayer was not required to deduct tax at source on such payment under Section 195 of the Act.



www.home.kpmg/in

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Prahlad 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

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