

# TAX FLASH NEWS

15 January 2020



## Tax needs to be deducted at source on year-end provisions since payees are identifiable and the provisions are for ascertained liabilities

### Background

Recently, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Inter Globe Aviation Ltd.<sup>1</sup> (the taxpayer) held that the taxpayer is liable to deduct tax at source on year-end provisions since the payees are identifiable and the provisions are for ascertained liabilities.

### Facts of the case

The taxpayer, a public limited company, engaged in the business of transport of passengers by aircraft and uses airport. During the assessment year 2010-11, the taxpayer made provision for expenses at the year end. However, the taxpayer did not deduct tax stating that it is year-end provision and the parties were not identifiable.

The Assessing Officer (AO) rejected the contention of the taxpayer and held that the taxpayer should have deducted tax at source on the payment as the taxpayer has made ascertained provision for expenses.

### Tribunal decision

As per the provisions of the Income-tax Act, 1961 (the Act) tax is required to be deducted as and when the taxpayer become responsible for payment to the parties. When the expenditure was incurred by the taxpayer, the corresponding liability definitely arises for payment of such expenditure. The amount of expenditure incurred can be determined only if there was a identified recipient of the sum. There is a methodology available for working out the amount payable by the taxpayer to the recipient. There is a corresponding liability arising out of the existing

contract or customs by the taxpayer with the recipient. If these ingredients are not satisfied the taxpayer cannot be said to have incurred the expenditure.

In the absence of one of these criteria, it is not an ascertained liability but an unascertained liability, which does not satisfy the concept of accrual of expenditure. There may be reasons for receiving the bills by the service providers after certain time lag but that does not absolve the taxpayer from the liability of deduction of tax at source.

In the present case, the provision was made under a specified head. Provision was also made on certain basis therefor the amount was ascertained. It is not the case of the taxpayer that it has made an ad hoc provision. Thus, it cannot be said that the payee was not identified. Therefore, the tax was required to be deducted on the year-end provisions made by the taxpayer which were ascertained liabilities.

The Tribunal distinguished the decision of UCO Bank<sup>2</sup> wherein it was held that where the recipient of the income was unidentified, the provisions of Section 194A does not apply. However, in the present case the taxpayer has made an ascertained provision and therefore, at the time of making of the provisions the payees identifiable because the provision is made only on the basis of terms and conditions agreed with the recipient of the income.

<sup>1</sup> Inter Globe Aviation Ltd. v. ACIT (ITA No. 5347/Del/2012) (ITA No. 4449/Del/2013) – Taxsutra.com  
Note – The Delhi Tribunal dealt with various issues in this decision. However, this flash news deals with the issue of TDS applicability on year-end provisions

<sup>2</sup> UCO Bank v. Union of India [2015] 369 ITR 335 (Del)

The Tribunal also distinguished the decision of the Karnataka High Court in the case of Karnataka Power Transmission Corporation Ltd<sup>3</sup> wherein after making the interest provision subsequently it was noticed that the interest would never be paid to suppliers and the corresponding reversal entries were made in the books of account. In these facts, the Karnataka High Court held that tax was not required to be deducted since no income accrued to the recipient. However, in the present case, it was not the case of the taxpayer that liability was not payable to the parties. The taxpayer himself stated that subsequently when the bills are received from the same parties, the tax was deducted thereon.

Similarly, the Tribunal distinguished various other decisions<sup>4</sup> relied on by the taxpayer.

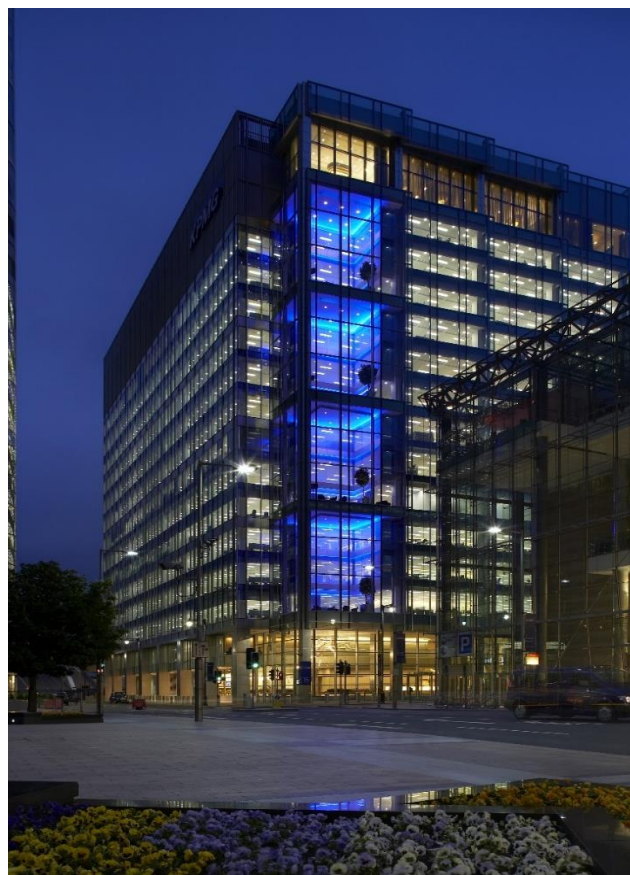
### Our comments

The issue with respect to the applicability of TDS provisions on the year-end provisions has been a matter of debate before the Courts/Tribunal.

The Chennai Tribunal in the case of Dishnet Wireless Limited<sup>5</sup> held that wherever the payee is identified, and quantum is also ascertainable on the last day of the financial year, the taxpayer has to deduct tax at source. Similarly, the Bangalore Tribunal in the case of IBM India (P.) Ltd.<sup>6</sup> held that the taxpayer was liable to deduct tax on the provision for expenditure created in the books of accounts. The accrual of liability for any expenditure was not dependent on receipt of an invoice from any person to whom payment for expenditure has to be made. The claim of the taxpayer that it created provision on an estimated basis using some arithmetic/geometric progression method was not acceptable due to lack of concrete evidence.

However, the Mumbai Tribunal in various cases<sup>7</sup> held that the taxpayer had no liability to deduct tax in respect of provision made in the books of accounts since the payees were not identifiable at the time of making of the provision, thus no statutory obligation was cast upon the taxpayer to deduct tax at source.

The Tribunal in the present case has held that the taxpayer is liable to deduct tax at source on year-end provisions as the payees are identifiable and the provisions are for ascertained liabilities.



<sup>3</sup> Karnataka Power Transmission Corporation Ltd v. DCIT [2016] 383 ITR 59 (Kar)

<sup>4</sup> Apollo Tyres Ltd [2017] 163 ITD 177 (Del), Alliance Media and Entertainment Ltd [2017] 163 ITD 627 (Mum), Pfizer Ltd v. ITO [2012] 28 taxmann.com 17 (Mum.)

<sup>5</sup> Dishnet Wireless Ltd. v. DCIT [2016] 45 ITR(T) 430 (Chennai)

<sup>6</sup> IBM India Private Ltd. v. ITO (ITA Nos. 749 to 752/Bang/2012)

<sup>7</sup> Alliance Media & Entertainment Ltd. v. ITO [2017] 79 taxmann.com 114

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