



# **Recent Developments and Issues on TDS**

# Amendments by Finance Act, 2017

## ➤ Sec 194-IB – Payment of rent by certain individuals or Hindu Undivided Family(w.e.f. 01.06.2017)

- ✓ Applicable to : Individual and HUF(Other than covered u/s. 194-I)
- ✓ Nature of Payment: Rent for the use of Land or Building or both
- ✓ Threshold Limit: Rs.50,000/- per month or part of a month
- ✓ Rate of Deduction: 5% of such rent
- ✓ Point of Deduction: At the time of credit of rent, for the last month of the previous year or last month of tenancy, if the property is vacated during the year, to the account of payee or at the time of payment thereof, whichever is earlier.
- ✓ Provision of sec 203A: No requirement to obtain TAN

➤ **Sec 194-IC - Payment under Specified Agreement (w.e.f. 01.04.2017)**

- ✓ Applicable to : Any person responsible for making payment to a resident under a Specified Agreement u/s.45(5A) (Joint Development Agreement)
- ✓ Nature of Payment: Consideration(not being consideration in kind) payable under Specified Agreement to any Individual or HUF

**Specified Agreement:** *A registered agreement in which the owner of land or building or both agrees to allow another to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both, in such project, such share being with or without payment of part of the consideration in cash.*

- ✓ Threshold Limit: No threshold Limit
- ✓ Rate of Deduction: 10% of such consideration
- ✓ Point of Deduction: At the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

## ➤ Sec 194-J - Fees for Professional or Technical Services (w.e.f. 01.06.2017)

- ✓ Applicable to : Any person including individual or HUF who is required to get his books of accounts u/s.44AB
- ✓ Nature of Payment: Any sum paid to a person engaged only in the business of operation of call center
- ✓ Threshold Limit: Such sum or aggregate of such sum exceeds Rs.30,000/-
- ✓ Rate of Deduction: 2% of such sum
- ✓ Point of Deduction: At the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

➤ **Sec 197A - No-deduction of tax at source to be made in certain cases (w.e.f. 01.06.2017)**

- ✓ W.e.f. 01.06.2017, individuals receiving insurance commission referred to in section 194D above Rs.15,000/- on which tax is deductible at the rate of 5%, can file self-declaration in Form 15G/15H for non-deduction of tax at source declaring that tax on his estimated total income of the relevant previous year would be NIL.

**F. No.279/Misc/M-140/2015 - ITJ dated 26<sup>th</sup>**  
**April, 2016**

- Payment of interest on refund under section 244A of excess TDS deposited under section 195.

# Section 192 : Salary

## ❖ Commission to Managing Director

- Commission to Managing Director as fixed percentage of profit.
- Accrual of commission in the year of approval in Board Meeting held next year.
- Therefore TDS also to be effected in the subsequent year.

CIT Vs. R. Lakshmi Narayan 202 CTR 125 (Mad)

- No interest u/s 234B and 234C to be levied where Income is by way of Salary u/s. 192.
  - Peter Morris Vs. ACIT (TDS) 389 ITR 501 (SC)

# Sec. 192 vs. Sec. 194J

## ❖ Consultant Doctors engaged by Hospitals

- CIT Vs. Apollo Hospitals International Ltd (2013) 359 ITR 78(Guj HC)
- DCIT Vs. Yashoda Super Speciality Hosp. (2010) 29 CCH 544(Hyd Tri)
- Ivy Health Life Science (P) Ltd. 20 ITR (Trib.) 179 Chandigarh.



# Section 194A : Interest other than “Interest on Securities”

- ❖ Interest on FDR's, made in the name of the Registrar General of Court or the depositor of the fund on the directions of the court, will not be subject to TDS.

*Ref: “Circular No.23/2015 in F.no. 279/Misc./140/2015-ITJ  
dt.28.12.2015”*

- ❖ Interest component on Decree.

Once a decree is passed, it is a judgement & order of Court which has to be discharged only on payment of amount due.

No liability of TDS on interest component in decree.

Madhusudan Shrikrishna Vs. Emkay Exports 188 Taxman 195(Bom)  
Akbar Abdul Ali Vs. Additional CIT (2012) 146 TTJ 57 (Mum) (UO)

# Section 194H : Commission or Brokerage

- ❖ Discount allowed to licensed Stamp vendors – Does not fall within the expression “commission” or “brokerage” under sec. 194H.  
CIT Vs. Ahmedabad Stamp Vendors Assocn. (2012) 348 ITR 378 (SC)
- ❖ Net receipt by the franchisees is commission in nature and not discount.  
Bharti Cellular Ltd. v. ACIT, . [2013] 354 ITR 0507 (Cal.)  
Vodafone Essar Cellular Ltd. vs. ACIT[2011] 332 ITR 0255 (KER.)
- ❖ No TDS on Sales Promotion  
CIT Vs. Intervet India Pvt. Ltd. (2014) 364 ITR 238 (Bom)

# Rent u/s. 194I

- ❖ Payment towards lease premium is not subjected to TDS.  
Ref: Rajesh Projects (India) P. Ltd & others V. C.I.T. (TDS)  
W.P.(C) 8085/2014, C.M.APPL.18876/2014 Dt. 16/02/2017
- ❖ Land used for parking aircraft.  
Ref: Japan Airways Co. Ltd. Vs. CIT (2015) 377 ITR 0372(SC)
- ❖ Amount paid to hotels for rooms occupied.  
Ref: Krishna Oberoi Vs. Union of India (2002) 257 ITR 105 (AP)  
The East India Hotels Ltd. Vs. CBDT (2010) 320 ITR 0526
- ❖ Compensation paid for alternate accomodation  
TDS not required to be deducted.  
Ref : Sahana Dwellers (P.) Ltd. Vs. ITO (2016) 67 taxmann.com 202  
(Mum)

# Section 194J : Fees for professional or technical services

- Transaction charges paid by broker to stock exchange is not fees for rendering of any managerial, technical or consultancy services

Ref: CIT-4, Mumbai Vs. Kotak Securities Ltd. (SC) Appeal No. 3141 of 2016.

# Payment on transfer of certain immovable property other than agricultural land u/s. 194IA

- ❖ Amount paid before the provision coming into effect

Ref: Shubhankar Estates Private Limited vs. The Senior Sub-Registrar, The Union Bank of India and the Chief Commissioner of Income-tax, Writ Petition No.57385/2013(Kar HC dt.03.06.2015)

- ❖ Applicability to a transaction of transfer by way of an exchange and/or where the considerations is in kind

Ref: CIT vs. Chief Accounts Officer, Bruhat Bangalore Mahanagar Palike(BBMP)(ITA No. 94 of 2015 and ITA No. 466 of 2015; order dated 29.09.2015) Karnataka HC

- ❖ Applicability to rights in land or building or to reversionary rights

# Certificate u/s.197

- Statutory provision of tax deduction at source at lower rate is “person specific” and not “sum specific”

Kolkata ITAT in case of Twenty First Century Securities Ltd 163 ITD 270 Dt. 03.02.2017 after referring provision of Sec. 197(2) and Rule 28AA(2) concluded

## Rate at which Tax is to be deducted

As per provisions of Sec.90(2), Rate either of (a) or (b) whichever is beneficial to the Non - Resident Payee shall apply

(a) At the rate prescribed in the relevant Finance Act + SC+EC at the applicable rate

OR

(b) At the rate prescribed in the relevant DTAA

## Section 206AA(1)

Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely: –

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.

Section 206AA is also applicable to payments made to non residents payee in case of failure to furnish PAN to the payer.

# WHETHER PROVISIONS OF SECTION 206AA WILL APPLY OR SECTION 90(2) WILL APPLY ?

- ❖ Bosch Ltd vs ITO (2013) 88 DTR 0311(Bangalore ITAT)
- ❖ Serum Institute of India Ltd (2015)40 ITR 0684(Pune ITAT)
- ❖ Smt. A. Koushalya Bai vs Union of India (Kar HC) 346 ITR 156.
- Quick Flight Limited vs. ITO ITA No.1204/ Ahd/2014 Dt. 04.01.2017
- Nagarjuna Fertilisers & Chemicals Ltd. ITA No. 1187/H/2014 Dt: 13.02.2017 (Hyd.)(Sp. Bench)



# Consequence of Default

## ❖ An Assessee in Default:

### • Explanation to section 191:

For the removal of doubts, it is hereby declared that if the deductor does not deduct, or after deducting fails to pay, or does not pay, the whole or any part of the tax, where the assessee has also failed to pay such tax directly, then, such person shall be deemed to be an assessee in default within Section 201(1), in respect of such tax.

## ❖ **Deductee has Paid the Taxes on Related Receipts**

- Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CIT. 293 ITR 226 (SC)
- CIT vs. Bharati Cellular Ltd. 44 DTR 190
- Circular No. 275/201/95-IT(B) dated: 29/01/1997
- Rule 31ACB provides that the certificate from an accountant shall be furnished in Form 26A.

## ❖ **Due to Loss, Deductee has no Tax Liability**

- ITO Vs. Owen D'souza 116 Taxman 28(mum)(mag)
- Thomas Muthot Vs. Dy. CIT 28Taxman.com 25(coch.)

❖ **Taxes Presumed to Have Been Paid as the Deductee is a Government Undertaking:**

- CIT Vs. Trans Bharat Aviation (P) Ltd. 320 ITR 671 (Del.)

❖ **Short Deduction on Account of Bonafide Belief:**

Deductor was under bonafide belief that the conveyance allowance was exempt u/s.10(14)

- CIT Vs. ITC Ltd.263 CTR 241 (All)

## Section 40(a)(i)/(ia)

Expenditure paid during the Financial Year on which tax is not deducted, whether disallowance of expenditure is called for?

Palam Gas Service S.C. Civil Appeal no. 5512 of 2017 Dt.03.05.2017

CIT Vs. Crescent Export Syndicate 216 Taxman 258 (Cal.)

Tube Investments of India 325 ITR 610 (Madras)

P.M.S. Diesels 3740 ITR 562 (P & H)

- Overruled

Vector Shipping Services 357 ITR 642 (All)

## Section 40(a)(i)/(ia)

### ❖ Short deduction

Whether the amount to be:

- a) Fully disallowed
  - b) Proportionately disallowed
  - c) No disallowance
- Ref: S.K. Tekriwal (Kol.) 48 SOT 515 (Kol.)  
Approved by Calcutta H.C 361 ITR 432 .  
Chandabhoy & Jassobhoy 49 SOT 448(Mum)  
Sunbell Alloys Co. of India Ltd.(Mum)
- ### ❖ Genuine and bonafide belief that no tax is to be deducted
- Ref: Kotak Securities Ltd. (Bom) ITNo.3111 of 2009  
(2012) 340 ITR 333

❖ **Second proviso** to section 40(a)(i)/ (ia) inserted by the Finance Act 2012, from 01/04/2013 whether applicable retrospectively?

- Held No

Ref: The Income Tax Appellate Tribunal Cochin Bench,  
Cochin ITA No 361/Coch/2012

- Held Yes

Ref: Rajeevkumar Agarwal Vs. Addl CIT (2014) 34 ITR  
0479(Agra Tri)

# Fees for default in furnishing statements

❖ **Section 234E**: Levy of fee in case of delay in filing TDS or TCS statement:

- Rs.200 per day but not exceeding amount of TDS
- Before submitting TDS/TCS Statement
- w.e.f. 01.07.2012
- Constitutional validity of the provisions of section 234E of the Act are challenged before the High Courts

Ref:

Rashmikant Kundalia & Another Vs. Union of India & Other (2014) 89 CCH 041 (Mum HC).

- Levy by way of intimation u/s. 200A prior to 01/06/2015 is unsustainable in law.

Ref: Sobia Health Care 9p) Ltd. Vs. DCIT (2015) 121 DTR 125  
Amritsar

Smt. T.G. Indrani Builders p. Ltd. Vs. DCIT-CPC TDS  
Ghaziabad 2016, TIOL-54-ITAT-Ahm

# Penalty u/s. 272B

- ❖ Incorrect or non furnishing of PAN of deductees by deductor:
- ❖ As per provision of section 139(A) invites penalty u/s. 272B
- ❖ Regardless of the numbers of default in each statement, maximum penalty of Rs. 10000/- can be imposed on the deductor.

Ref: CIT(TDS) Vs. DHTC Logistics Ltd. (2012) 33 CCH 0698 (Del Tri)



# Credit of T.D.S.

Rule for allowing credit for TDS for the purpose of section 199.

Rule 37BA inserted w. e. f. 01/04/2009 vide notification No.28 dt. 16.03.2009.

## Conditions:

- ❖ On the basis of information of tax deducted furnished by the deductor.
- ❖ Information in Return of Income.
- ❖ Credit will be allowed for the Assessment Year for which such income is assessable.

Where Tax is deducted and paid to Central Government and the income is assessable over a number of years, credit for TDS shall be allowed across those years in the same proportion in which the income is assessable to tax .

- ❖ **Ref. Sec. 198** :All sums deducted in accordance with the provisions of this chapter shall, for the purpose of computing the income be deemed to be income received.[Except Salary]
- ❖ **Ref. Sec. 205** : Where tax is deductible at source under the provisions of this chapter, the assessee shall not be called upon to pay the tax to the extent.....

# Issues

## ❖ Credit to be allowed in which year?

Smt Varsha G. Salunke Vs. Dy CIT 98 ITD 147  
(Mum) (TDS)

Pradeepkumar Dhir Vs. ACIT 109 TTJ 445 (Chd)  
(TM)

As per new provision credit of TDS available  
irrespective of year to which it relates.

Sadbhav Engineering Ltd. Vs. DCIT ITA Nos.  
610/Ahd/2008

ACIT, Vijayawada Vs. Assessee 3 March, 2011  
ITA/324/V/09

- ❖ What if income is not assessable (e.g. Assessee follows project completion method.) ?

Toyo Engineering India Ltd. Vs. JCIT 100 TTJ 373  
(Mum)

- ❖ Whether sec. 198 applies even if income not recd?

Praveen kumar Gupta Vs. ITO I.T.A.No.  
1252/DEL/2012 / dt. 27.07.2012

Supreme Renewable Energy Ltd. Vs. ITO 124 ITD  
394 (Chennai)

# Credit of TDS not claimed in Return of Income

- ❖ Sec 155(14) on TDS credit self-contained; Appellate Authority empowered to consider revised return in the case of Desein Pvt. Ltd (ITAT Delhi Bench) dt.13/12/2013.
- ❖ TDS Credit must be given to the assessee from whose income such tax was deducted-  
Gloric Investments Ltd. vs. Deputy Director of Income Tax (International taxation)-ITA No. 1453/Del/2006 (ITAT Delhi Bench)
- iGate Infrastructure Management Services Ltd.  
ITA No. 1703/Bang/2016 Dt. 28.04.2017



**THANK YOU**