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TAXATION TIMES

November 2021



Taxation Times is a monthly newsletter published by UJA specifically with an intent and object to simplify and provide clarity on certain provisions of the Income Tax Act, discuss the implications of various amendments and circulars notified time and again, understand the judicial precedents as decided by various courts and interpret these.

The Taxation Times is an initiative to keep you abreast with the latest development in the realm of the Direct Taxes in India.

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Introduction

The world at large has once again been hit by the scare of the new variant of the Corona Virus. Just as the world expected to resume to normalcy and India had resumed international travel, the news of this variant has brought everything to a standstill. How would the Indian Government & the other nations deal with this variant. Time to wait & watch.

Coming back to this month's Taxation Times, we're pleased to roll out this edition of the Taxation Times. In this edition, we can look forward to –

- > The basics of section 195 of the Income Tax Act 1961;
- > Judicial precedents from the Tribunals and High Courts;
- > Tax news from around the world;
- > Upcoming compliances for December 2021.

We hope that you find this edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at info@uja.in

Happy Reading!

Best Regards,
UJA Tax Team



Neha Raheja
Partner - Direct Tax UJA

Section 195: Payment to Non-Resident – Applicability of provisions of Tax Deduction at Source (TDS) and tax rates thereon

TDS provisions have been prescribed in respect of residents as well as non-residents. Section 195 of the Income Tax Act provides that any person responsible for making payment of any sum to non-residents or foreign company shall deduct TDS at the rates in force if such amount is chargeable to tax in India.

A detailed analysis is as under:

Clause (1) of section 195 of the Income Tax Act, 1961 ('the Act') says:

'Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force'

Components of section 195 are as under:

A *Any person responsible for paying to a non-resident, not being a company, or to a foreign company....'*

Who are covered under this section?

a. **Payer** is Any person i.e. person as defined under section 2 sub-clause (31) of the Act which includes Individual/HUF/Firm/Company/AOP/BOI, etc.

b. **Payee** is non-resident or foreign company

c. Further Explanation (2) says, this section applies to all persons, resident or non-resident, whether or not the non-resident person has —

- (i) a residence or place of business or business connection in India; or
- (ii) any other presence in any manner whatsoever in India.

B *'.....any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries")...'*

What are the nature of payments covered?

a. Any Interest but not include interest payment covered under section:

- (i) 194LB : Income by way of interest from infrastructure debt fund
- (ii) 194LC : Income by way of interest from Indian company.
- (iii) 194LD : Income by way of interest on certain bonds and Government securities

b. Any some chargeable under the provisions of Income Tax Act but not include income chargeable under head 'Salary'.

C *'.....at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon...'*

When to deduct tax at source?

a. Earlier of following events:

- (i) When account of the payee is credited towards the said transaction in books of Payer or
- (ii) When amount is paid in cash/issuance of cheque or other mode.

b. In case, interest payable by the Government or a public sector bank or public financial institution covered u/s 10 (23D) of the Act, tax shall be deducted only at the time of payment in cash/issuance of cheque or other mode.

c. The expression *'...in any other mode..'* includes payment made in kind.

D *'.....at the rates in force.'*

At what rate tax is to be deducted?

a. Rates in force means rates of income tax as specified in:

- (i) Finance Act of the relevant previous year, or
 - (ii) Double Taxation Avoidance Agreement (DTAA)
- which are more beneficial to the payee (section 90(2) of the Act)

b. If the rates mentioned in DTAA are applied, then surcharge and education cess is not required to be added separately.

Threshold Limit

No Threshold limit has been prescribed for deduction of tax at source under section 195 of the Act.

Nil/ Lower deduction of taxes certificate:

A Application by the PAYER u/s 195(2) and 195(7) of the Act:

a. Purpose

Lower Deduction Certificate for determination of appropriate proportion of sum (other than salary) payable to non-resident, chargeable to tax in case of the recipient

b. Form

Form No. 15E

c. Before

Jurisdictional Assessing Officer of Payer

d. Non Applicability

The benefit of section 195(2) cannot be availed in the following cases where the entire amount shall be subject to a special rate of tax namely section 115A, 115AB, 115AC, 115AD, 115BBA and 115E.

B Application by Payee u/s 195(3) of the Act:

a. Purpose

Nil or Lower Deduction Certificate for no deduction/ collection of tax or deduction/collection of tax at a lower rate

b. Form

Form No. 13

c. Before

Jurisdictional Assessing Officer of Payee

d. Validity

A certificate granted shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

Tax Rates specified under 195 of the Income Tax Act 1961

Particulars	TDS Rates
Income from Long Term Capital Gain under s. 115E	10%
Income by way of Long Term Capital Gain under s. 112A	10%
Short Term Capital Gain under s. 111A	15%
Income by way of dividend	20%
Income from fees for technical services payable by Government or Indian concern	10%
Income from royalty payable by Government of Indian concern	10%
Any other income	30%

Case Law

“The taxpayer had incurred expenditure in connection with expansion of its existing business by way of starting a new hotel chain. The expenditure so incurred was in the nature of revenue expenditure & therefore allowable as revenue expenditure under s. 37(1) of the Income Tax Act 1961.”

Facts

The taxpayer¹ is a company engaged in the business of real estate development & financing. The taxpayer's case was selected for scrutiny. It was observed that the taxpayer had earned interest income of INR 4.46 crores against which finance cost of INR 4.66 crores has been debited. It was further observed that INR 3.3 crores were debited under professional expenses. The taxpayer was asked to justify the professional expenses so incurred against the interest income. The taxpayer held that interest was earned on inter deposit from companies and the companies have deducted tax at source. The taxpayer had planned to start a hotel chain in UK & other expenses including professional fees were connected to the same project.

The Ld. Assessing Officer ('AO') concluded the assessment and reduced the business loss and depreciation loss of the taxpayer. The Ld. Commissioner of Income Tax Appeals [CIT(A)] deleted the disallowance upheld by the AO. Aggrieved, the Revenue has preferred an appeal before the Hon'ble Income Tax Appellate Tribunal ('ITAT').

Held

1. The Ld. Departmental Representative (DR) supporting the Assessment Order passed by the Ld. AO stated that since the taxpayer has not commenced business activities, the expenditure should be capitalized. Therefore, the Ld. CIT(A) has wrongly allowed the expenditure by the taxpayer.
2. The taxpayer supported the order passed by the Ld. CIT(A) and held that since the business of the taxpayer was in existence and expenses were incurred in connection with expansion of business, the Ld. CIT(A) directed the Ld. AO to delete the disallowance. The CIT(A) has held that the expenditure incurred by the taxpayer was to be treated for the purpose of carrying on existing business of the taxpayer & therefore, allowable as revenue expenditure under s. 37(1) and the same would not become capital merely because such expansion was termed as a new business project.

While deciding so, the Ld. CIT(A) has placed reliance on the decision of the Hon'ble Delhi High Court in *CIT V/s SRF Ltd*² in which the Hon'ble High Court has held that where the taxpayer expands its existing business and claims expenses as pre-capitalization cost, the same is to be treated as revenue expenditure. Reliance was also placed on the case of *Reliance Footprint Ltd. V/s Asstt. CIT*³ wherein it was held that opening of stores at various places was a composite business of the taxpayer and the revenue expenditure claimed out of capital work in progress shown in balance sheet is allowable as revenue expenditure since it was expanding existing business. The Ld. CIT(A) also invited attention to the decision of the Chandigarh Tribunal in the case of *DSM Sinochem Pharmaceuticals India P Ltd V/s Dy. CIT*.⁴

3. After hearing the plea of both sides, the Hon'ble ITAT was of the opinion that there is no infirmity in the decision of Ld. CIT(A) and hence, the appeal of the Revenue deserved to be deleted.

“The Assessment Order passed by the Ld. Assessing Officer was bad in law as the time given to the taxpayer to reply to the show cause notice was extremely narrow (only one day) & the final assessment order passed was in violation of principals of natural justice, hence set aside.”

Held

The taxpayer⁵ was in receipt of show cause notice calling upon to show cause as to why assessment should not be completed as per draft assessment order proposing certain additions. The show cause notice allowed the taxpayer only one day to respond to the same. The taxpayer filed an adjournment requesting for extension in time since, the time granted to respond to the notice was very short. However, the Ld. Assessing Officer ('AO') passed the final assessment order as per the terms of the draft assessment order even before the time of adjournment had expired.

1 ITO V/s Blue Coast Infrastructure Development Ltd. [2021] 131 taxmann.com 282 (Chandigarh - Trib)

2 *CIT v. SRF Ltd.* [2015] 59 taxmann.com 180/232 Taxman 727/372 ITR 425 (Delhi) (Mag.)

3 *Reliance Footprint Ltd. v. Asstt. CIT* [2014] 41 taxmann.com 553/63 SOT 124 (URO) (Mum - Trib.)

4 *DSM Sinochem Pharmaceuticals India (P.) Ltd. v. Dy. CIT* [2017] 82 taxmann.com 316 (CHD - Trib.)

5 *Uday Desai HUF V/s National Faceless Assessment Centre, Delhi* [2021] 132 taxmann.com 117 (Bombay)

The time of one day granted to the taxpayer to respond to the show cause notice was not sufficient time. The Hon'ble Bombay High Court has held that the assessment order passed by the Ld. AO without providing the taxpayer a due opportunity to file his submissions to the notice – cum – draft assessment order was in violation of the principles of natural justice & the same ought to be set aside.

Tax in the News

EU tax competition driven by R&D and other incentives, not just rates

<https://mnetax.com/eu-tax-competition-driven-by-rd-and-other-incentives-not-just-rates-46263>

EU adopts public country-by-country reporting to deter corporate tax avoidance

<https://mnetax.com/eu-adopts-public-country-by-country-reporting-to-deter-corporate-tax-avoidance-46176>

Cairn and India to resolve long-running tax dispute

<https://mnetax.com/cairn-and-india-to-resolve-long-running-tax-dispute-46110>

Tax dispute resolution via mutual agreement procedure works, mostly, but is still slow

<https://mnetax.com/tax-dispute-resolution-via-mutual-agreement-procedure-works-mostly-but-is-still-slow-46284>

India & US agree on transition from India's 'equalization levy' digital tax

<https://mnetax.com/india-and-us-agree-on-transition-from-indias-equalization-levy-digital-tax-46299>

Upcoming Compliances for November 2021

7 December 2021

Due date for deposit of Tax deducted/collected for the month of November, 2021. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

30 December 2021

Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2020 to December 31, 2020) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc

15 December 2021

Third instalment of advance tax for the assessment year 2022-23

Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of October, 2021

Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of October, 2021

Due date for issue of TDS Certificate for tax deducted under section 194M in the month of October, 2021

Return of income for the assessment year 2021-22 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies or (d) an assessee who is required to furnish a report under section 92E

The due date for furnishing of return of income for Assessment Year 2021-22 has been further extended from September 30, 2021 to December 31, 2021 vide Circular no. 17/2021, dated 09-09-2021

30 December 2021

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of November, 2021

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of November, 2021

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of November, 2021

31 December 2021

Return of income for the assessment year 2021-22 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)

The due date for furnishing of return of income for Assessment Year 2021-22 has been extended from November 30, 2021 to December 31, 2021 vide Circular no. 9/2021, dated 20-05-2021

31 December 2021

Filing of belated/revised return of income for the assessment year 2021-22 for all assessee (provided assessment has not been completed before December 31, 2021)

The due date for filing of belated/revised return of income for the assessment year 2021-22 has been further extended from January 31, 2022 to March 31, 2022 vide Circular no. 17/2021, dated 09-09-2021

Furnishing of Equalisation Levy statement for the Financial Year 2020-21

The due date for furnishing of Equalisation Levy statement has been further extended from August 31, 2021 to December 31, 2021 vide Circular no. 16/2021, dated 29-08-2021

Intimation (required to be made on or before 30-11-2021) by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India in Form 3CEAC

The due date for such intimation has been extended to December 31, 2021 vide Circular no. 16/2021, dated 29-08-2021

31 December 2021

Report by a parent entity or an alternative reporting entity or any other constituent entity, resident in India, which is required to be furnished on or before 30-11-2021, in Form no. 3CEAD

The due date for furnishing report has been extended to December 31, 2021 vide Circular no. 16/2021, dated 29-08-2021

Intimation on behalf of an international group, which is required to be made on or before 30-11-2021, in Form no. 3CEAE

The due date for such intimation has been extended to December 31, 2021 vide Circular no. 16/2021, dated 29-08-2021

Note : The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has extended due dates for compliance falling during the period from 20-03-2020 to 31-12-2020. Readers are requested to please check the relevant documents from below links:

* [The Taxation and Other Laws \(Relaxation and Amendment of Certain Provisions\) Act, 2020.](#)

* [Notification No. 88/2020 \[F. No. 370142/35/2020-TPL\] / SO 3906\(E\) dated 29 October, 2020.](#)

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