

DIRECTTAX

Judicial Rulings

No TDS liability on year end provisions as payee not identified

- The Assessee is engaged in the business of providing software services and development of various products for Telecommunication Industry.
- During the relevant AY, ITAT made disallowance u/s 40(a)(i) of Income Tax Act, 1961 (the Act) on account of non deduction of TDS on year end provisions made towards legal and professional charges.
- Aggrieved, Assessee filed an appeal before the High Court ('HC') and HC ruled in favor of the assessee and held that no TDS is required to be deducted on year end provisions subsequently reversed in case where payee is not identifiable -
 - It is not in dispute that the provisions made at the end of the accounting year were reversed in the beginning of the next year and no payees were identified nor the exact amount payable.
 - In Karnataka Power Transmission Corporation Ltd. Vs. DCIT, this Court has held that if no income is attributable to the payee there is no liability to deduct tax at source in the hands of the tax deductor.
 - So far as the authority in Palam Gas Service Vs. CIT, it is relevant to note that the payees were identified in that case.

In contradistinction, in the case on hand the payees were not identified. Therefore, the said authority does not lend any support in the contentions urged on behalf of the Revenue.

Subex Ltd [TS-1014-HC-2022(KAR)]

Uphold TP adjustment on corporate guarantee to non-resident AE @ 0.50%

Deletes TP adjustment for addition of interest on long-outstanding share application money given to its wholly owned subsidiary

- The assessee is engaged in diversified business activities in engineering, manufacturing and marketing organization. It manufactures air condition, refrigerator equipment, material handling equipment, etc
- The assessee had issued comfort letter (credit of facility of 30.57 crores) to the banks in UAE and Saudi Arabia on behalf of its AEs and not charged any commission.
- TPO benchmarked the same using average guarantee commission rate i.e. 1.50% based on the data from bankers.
- CIT(A) reduced the rate of guarantee rate to 0.50% from 1.50%.
- ITAT upholds TP adjustment w.r.t. corporate guarantee commission at 0.50% following coordinate bench ruling in assessee's own case for AY 2013-14, which in turn relied on Bom HC ruling in Everest Kento Cylinders;

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- ITAT deletes TP adjustment for addition of interest on long-outstanding share application money given to its wholly owned subsidiary in Saudi Arabia –
 - Delay in allotment of share was genuine and the assessee has properly substantiated the same
 - By relies on coordinate bench ruling in assessee's own case for AY 2009-10 to AY 2011-12 and AY 2013-14 to 2014-15 which in turns relies on HC ruling in PCIT Vs. Agies Ltd. and Chennai Bench ruling in Pane Biscuits Ltd;

Voltas Limited [TS-67-ITAT-2023(Mum)-TP]

INDIRECT TAX

Judicial Rulings

Supply of Vouchers not leviable to GST, HC quashed AAR/AAAR ruling

- The Assessee is engaged in the business of procuring pre-paid payment instruments (PPI) like gift vouchers from the issuers and supplying them to the clients for specified face value who in turn issues such vouchers to their employees or other beneficiaries under promotional schemes. Hence, the assessee is merely acting as an intermediary between supplier of vouchers and client.
- The AAR, Karnataka passed the ruling holding that the supply of vouchers are taxable as goods. Ruling was further upheld by AAAR, Karnataka as well

- Aggrieved assessee filed petition before the High Court (HC) and HC ruled in favor of the assessee and held that supply of vouchers do not fall under the category of goods and services and are exempted from levy of tax –

- The definition of 'vouchers' as defined under the CGST Act, makes it clear that vouchers are instruments accepted as consideration for supply of goods or services and do not have any value of their own. Therefore, they would fall under the definition of 'money', defined under CGST Act which is specifically excluded from the definition of goods and service and therefore not leviable to tax.

- As per RBI Master direction, vouchers are PPI where no goods and services are identified at the time of issuance. Further, these PPIs do not permit cash withdrawal and they can be issued only with the prior approval of RBI.

- Supply of vouchers is mere transaction of money or actionable claim where no services are involved and therefore no tax is leviable.

- The HC held that transaction between the assessee and his clients is procurement of printed forms and their delivery, like currency. The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to assessee's client. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Hence, vouchers are neither goods nor services and therefore cannot be taxed.

M/s Premier Sales Promotion Private Limited v. Union of India (HC Karnataka)