

Prior to 1-6-2013 developer wasn't liable to TDS on purchase of property from NR due to non-discrimination clause

Summary – The Delhi ITAT in a recent case of Santur Developers (P.) Ltd., (the Assessee) held that In view of article 26(4) of DTAA between India and USA, assessee cannot be burdened with requirement of TDS in case of payment to three Indian individuals including one non-resident for sale or purchase of property in India (Position prior to 1-6-2013)

Facts

- The assessee-developer entered into a collaboration agreement with the 3 co-owners one of which was non-resident and paid earnest money of Rs. 1 crore with signing of agreement.
- The Assessing Officer had noticed that the assessee made payments to power of attorney holder of the non-resident without deduction of tax thereon. Consequently, proceedings under section 201 were initiated against the assessee.
- The Commissioner (Appeals) upheld the contention of assessee that in view of non-discrimination clause in article 26 of the DTAA between India and USA, the assessee was not obliged to deduct tax at source under section 195 in, as there is no provision in the Income-tax Act, requiring a resident to deduct tax at source from sale proceeds of land payable to any other resident. The Commissioner (Appeals) also observed that in any view of the matter, there was no loss to revenue because the non-resident had paid due taxes.
- On appeal:

Held

- The reasoning given by Commissioner (Appeals) with reference to article 26 of the DTAA between India and USA is fully justified because there is no provision in the Act requiring a resident to deduct tax at source from sale proceeds of land payable to any other resident and, therefore, in view of article 26(4), the assessee could not be burdened with the requirement of TDS in case of payment to non-resident as article 26 provides that the provisions of section 195 are not applicable on the reasoning that provisions of section 195 are applicable only when some remittance is required to be made from India to an outside country.