

Payer not at fault for not approaching AO under sec. 195(2) as it made purchase contract and not composite contract

Summary – The High Court of Madhya Pradesh in a recent case of Prism Cement Unit., (the Assessee) held that where agreement entered into by assessee with foreign company was for simple purchase contract and not a composite contract, provisions of section 195(2) would not applied

Facts

- The Assessing Officer found that assessee had not deducted TDS for various purchases made from Dubai based company and treated assessee as assessee-in-default under section 201(1) and section 201(1A)
- On appeals, the Commissioner (Appeals) as well as the Tribunal held that assessee was not liable to deduct TDS.
- On appeal :

Held

- An agreement was entered into by the assessee for the purchase of certain items *vide* quotation No. 210.62 dated 4-5-2006 a purchases made from Marine Power International, Dubai so also various other purchase contract similar in nature. This was not a composite contract, it was a simple purchase contract for purchase of certain items, all these purchase agreements were made for unit No. 1 and are beyond the purview of deductions contemplated under section 195(2), however, the assessee also has a separate unit known as unit No. 2 which has a separate TAN and PAN and assessment for this unit is also done separately and for this unit a worthy contract was entered into with Kopperrn Germany for supply, purchase and installation of certain machinery, *i.e.*, a composite works contract. The Assessing Officer in his remand note has admitted this position and the order passed by the Commissioner (Appeals), these aspects have been taken note of and it is specifically held that the contract on the basis of which the Assessing Officer made the addition by treating the appellant-company in default is for unit No. 2 and not for unit No. 1. If that be the factual position, its clear that for unit No. 1 the contract in question for which addition has been made was one for which the provision of sections 195(2), 201(1) and 201(1A) would not be applicable as the contract for the said unit was not a composite contract.