

## No TDS liability if payee not identifiable at time of making provision for expenditure at year end

**Summary – The Delhi ITAT in a recent case of Apollo Tyres Ltd., (the Assessee) held that where assessee-company could not ascertain identity of payees while making provision for expenditure under several heads of income at year end, assessee was not required to deduct tax at source on such provision**

### Facts

- A TDS survey was conducted by the Asstt. Commissioner of Income-tax at the premises of the assessee-company. The Assessing Officer passed an order under section 201 holding that it failed to deduct the TDS in respect of provisions of expenditures made under several heads of income.
- On appeal, the Commissioner (Appeals) sustained the order of the Assessing Officer.
- In the instant appeal before the Tribunal, the assessee submitted that next year when the actual expenditure was incurred, the provision was reversed and the deduction was claimed on the basis of actual expenditure incurred. When such expenditure was actually incurred, TDS was made as per law.
- On the other hand the revenue took stand that provision can be made only when the liability is an ascertained liability. Therefore, the assessee cannot claim that the payee in respect of whom the liability is created is unidentifiable. He further stated that as per provision of section 194C(2), the tax is to be deducted at source where any sum is credited to any account whether called suspense account or by any other name in the books of account of the person liable to pay such income.

### Held

- As per the scheme of Chapter XVII-B of the Income-tax Act, 1961, there is a provision for deduction of tax at source. Ordinarily, the deduction is to be made at the time of payment or the credit of the amount to the account of payee. However, as per provision of section 194C(2), the tax is to be deducted even if the amount is not credited to the account of the payee but to the suspense account.
- The Tribunal, Cochin Bench in the case of *Abad Builders (P.) Ltd. v. Asstt. CIT* [\[2014\] 43 taxmann.com 128/62 SOT 106](#) after considering the above provision, has held that tax is to be deducted even in respect of provision for expenses. However, the Tribunal, Chennai Bench in the case of *Dishnet Wireless Ltd. v. Dy. CIT* [\[2015\] 154 ITD 827/60 taxmann.com 329](#) has held that in the case of the year end provision where the party/payee is identifiable, the TDS is to be deducted and where the party is not identifiable, no TDS is deductible. Similar view has been taken by the Tribunal Mumbai bench in the case of *Industrial Development Bank of India v. ITO* [\[2007\] 107 ITD 45](#). After considering the scheme of Chapter XVII-B with regard to tax deduction at source, one agrees with the views expressed by Tribunal Mumbai Bench and Chennai Bench. As per the scheme of TDS under Chapter

XVII-B of section 199, the credit for the TDS is to be given to the deductee. Thus, the identification of the person from whose account income-tax was deducted at source is a pre-requisite condition so as to make the provision for Chapter XVII-B workable. Tax deducted at source is considered to be tax paid on behalf of the person from whose income the deduction was made and, therefore, the credit for the same is to be given to such person. When the payee is not identifiable, to whose account the credit for such TDS is to be given. Section 203(1) lays down that for all tax deductions at source, the tax deductor has to furnish a certificate to the person to whose account such credit is to be given. Therefore, when the tax deductor cannot ascertain the payee who is the beneficiary of a credit of tax deduction at source, the mechanism of Chapter XVII-B cannot be put into service. In view of the above, we, respectfully agreeing with the views of Tribunal Chennai Bench in the case of *Dishnet Wireless Ltd. (supra)*, set aside the orders of the authorities below on this point and restore the matter to file of Assessing Officer for both the years under consideration. Tribunal directed the Assessing Officer to verify whether the payee is identifiable and the amount payable to him is ascertainable. Then the assessee would be required to deduct tax at source in respect of such provision. However, in case payee is not identifiable, the provision of Chapter XVII-B, *i.e.*, tax deduction at source, cannot be pressed into service and, therefore, the assessee is required to deduct tax at source in such a case. The Assessing Officer will readjudicate the issue afresh after examining the above facts. Needless to mention that he will allow adequate opportunity of being heard to the assessee while giving effect to the order of Tribunal.