

No TDS on rental payment made by co. on behalf of directors if recipient had no deduction certificate u/s 197

Summary – The Visakhapatnam ITAT in a recent case of Sudalagunta Hotels Ltd., (the Assessee) held that where recipient of rental payments was an entity governed by section 12A and its income was exempt from tax and also recipient had obtained no deduction certificate under section 197, on said rental payments, assessee was not required to deduct TDS on impugned payments

Facts

- The assessee was a company engaged in the business of running hotels by availing the license taken from Tirumala Tirupathi Devasthanams (TTD) Board in the name of directors of the assessee-company.
- During the course of survey conducted on business premises of assessee, it was noticed that the assessee had been paying rent to TTD but failed to deduct tax at source on rental payments on behalf of its directors. Accordingly, the Assessing Officer observed that the payments made by the assessee on behalf of its directors were in the nature of rent for which the assessee required to deduct tax at source under section 194-I. Since, the assessee failed to deduct tax at source on payments, the assessee was in default under section 201(1) and computed TDS on total rent payments.
- On appeal, Commissioner (Appeals) observed that the TTD was an entity governed by the provisions under section 12A and also it had obtained a certificate under section 197, for non-deduction of tax at source on rental payments, therefore, the assessee was not obliged to deduct tax at source on such rental payments to TTD.
- On revenue's appeal to the Tribunal:

Held

- It is found that the directors of the company had obtained license from TTD for operating two hotels at Tirumala hills. The rental agreement was entered in the name of the directors, though, the assessee had paid the amount directly to TTD, it had paid the amount on behalf of the directors. It is further observed that TTD had issued rental receipts in the name of individual directors. It is further noticed that TTD was an entity governed by section 12A had obtained certificate under section 197 for non-deduction of tax at source on rental receipts from the tenants. Since, income of the recipient, TTD was exempt from tax and also fact that the recipient had obtained no deduction certificate under section 197, the assessee not obliged to deduct tax at source on the impugned payments. No matter, whether the payment had been made by the assessee directly or paid on behalf of the directors, as long as the recipient income was exempt and also the recipient had got a

certificate under section 197, for non-deduction of tax at source on the impugned payment, the assessee need not to deduct tax at source on such payments.

- The Commissioner (Appeals) after considering the relevant facts has rightly directed the Assessing Officer to delete additions made towards short deduction of tax at source on rental payments for the assessment years 2009-10 to 2011-12.
- The facts remain unchanged. The revenue fails to bring an record any evidence to prove the findings of Commissioner (Appeals) is correct. Therefore, we uphold the Commissioner (Appeals) order and dismiss appeals filed by the revenue.