

## If tax was deducted on bona fide estimate the deductor cannot be treated as assessee-in-default

**Summary – The Cochin ITAT in a recent case of Mahatma Gandhi University, (the Assessee) held if tax was deducted on bona fide estimate the deductor cannot be treated as assessee-in-default**

### Facts

- The assessee was a University. It was discharging the TDS liability on the payments made to employee on the death-cum-retirement gratuity (DCRG), commutation of pension and leave salary after allowing exemption provided under section 10(10)(iii), 10(10A)(ii) and 10(10AA)(ii).
- The Assessing Officer was of the view that there is specific provision provided in the Income-tax Act to tax the retirement benefits of the University employees and these are different from Government employees and the employees of the University did not fall under the category of Government Employees. Hence the exemptions available to the Government employees would not be applicable to the University employees. Thus, TDS was to be made on taxable portion of the payment of DCRG, commutation of pension & leave salary. The Assessing Officer passed the order under section 201(1) and 201(1A).
- On appeal, the Commissioner (Appeals) held that the assessee was to be treated as 'State' for the purpose of application of TDS provisions.
- On appeal, the main contention of the assessee was that the employees of the assessee were holding civil posts under the State Government. As such, the provisions of section 10(10)(i), 10(10A) and 10(10AA) were applicable to the assessee's case. Accordingly, the assessee was not liable to deduct TDS on said payments.

### Held

- The issue to be considered is whether the provisions of sections 10(10)(i), 10(10A) and 10(10AA) are applicable or not. For this, two requirements must be fulfilled as per section 10(10), i.e., first that the employee should hold a civil post and second such civil post must be under the State Government.
- The assessee University was a statutory body formed by an Act of the State Legislature. The University was created by the State Government for imparting higher education in the State.
- The University was established by the Government as an autonomous institution and is a Government organization and the Government frames the policy and autonomous institutions implement it. The income of the University is exempt under section 10(23C). The State Government exercises power in appointing staff to posts in the University.
- The employees of the assessee are found to be holding civil posts under the State Government, therefore, the provisions of section 10(10)(i), 10(10A) and 10(10AA) are fully attracted. Once the assessee falls under the above provisions of the Act, the same cannot be subject to TDS. Therefore,

payments made by the assessee to its employees towards death cum retirement gratuity, commutation of pension or leave salary shall not be liable for TDS to the extent permitted under the provisions of section 10(10)(i), 10(10A) and 10(10AA).