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8 May 2020

Withholding tax on payment to non-resident sport associations

The Hon'ble Supreme Court has held that guarantee payment made to non-resident sports associations in connection with the 1996 World Cup Cricket tournament hosted in India, was subject to withholding tax under Section 194E of the Income-tax Act, 1961.

Facts of the case:

- Pak-Indo-Lanka Joint Management Committee (taxpayer)[1] was a Committee formed by the Cricket Control Boards / Associations of three countries (viz. Pakistan, India and Sri Lanka), for hosting / conducting the 1996 World Cup Cricket tournament.
- The taxpayer had opened two bank accounts in London and made certain payments from these bank accounts to the International Cricket Council (ICC) as well as to the Cricket Control Boards / Associations of the different ICC member countries (Boards).
- Section 115BBA of the Income-tax Act, 1961 (ITA) provides for concessional rate of tax of 20 percent[2] (earlier 10 percent) for, *inter alia*, amounts paid to non-resident sports association or institution for game[3] or sport played in India. Further, Section 194E of the ITA provides for withholding tax on amounts covered under Section 115BBA of the ITA.
- The Assessing Officer (AO) in his order dated 6 May 1997 held that the taxpayer had failed to withhold tax from the payments made to ICC and the Boards under Section 194E of the ITA. Thus, the taxpayer was required to pay the applicable withholding tax along with interest.
- On appeal to the Commissioner of Income-tax Appeals [CIT(A)]:
  - The CIT(A) detailed out the payments made by taxpayer into the following seven categories based on the purpose of payment:

Sr. no.	Purpose of payment	Amount (Sterling Pounds)
1	Guarantee money paid to 17 countries which did not participate in the World Cup matches	1,700,000
2	Amounts transferred to Pakistan and Sri Lanka for disbursement of prize money in these countries	120,000
3	Payment to ICC as per Resolution dated 2 February 1993 in connection to the expenses incurred by ICC for the tournament and for development of cricket	375,000
4	Payment for qualifying matches held outside India	200,000
5	Guarantee money paid to South Africa and United Arab Emirates which did not play any match in India	360,000
6	Guarantee money paid to Australia, England, New Zealand, Sri Lanka and Kenya with whom double taxation avoidance agreements exist	885,000

[1] 116 taxmann.com 394

[2] The tax rate under Section 115BBA of the ITA was increased from 10 percent to 20 percent with effect from Financial Year 2012-13 corresponding to Assessment Year 2013-14.

[3] Other than games covered under Section 115BB of the ITA such as card game, crossword puzzle, etc.

Sr. no.	Purpose of payment	Amount (Sterling Pounds)
7	Guarantee money paid to Pakistan, West India, Zimbabwe and Holland	710,000
Total		**4,350,000**

- The CIT(A) held that payments referred to in Sr. No. 2 relating to prize money was to be paid to winner and players and was in relation to matches played outside India. Hence, the same was not covered by the provisions of Section 115BBA of the ITA.
- As regards the other six payments (i.e. mentioned in Sr. No. 1 and 3 to 7), the CIT(A) held that the provisions of section 115BBA of the ITA would be attracted. However, considering that only 17 out of a total of 37 matches were played in India, the CIT(A) held that only 17 / 37th portion i.e. 45.94 percent of the payment was subject to withholding tax.

- Both the taxpayer and the Revenue filed appeals before the Income Tax Appellate Tribunal (ITAT). On appeal, the ITAT held as follows:

Sr. No.	Purpose of payment	ITAT ruling	Amount (Sterling Pounds)
1	Guarantee money paid to 17 countries which did not participate in the World Cup matches	It could not be said the income was earned through a source of income in India	1,700,000
2	Amounts transferred to Pakistan and Sri Lanka for disbursement of prize money in these countries	Upheld the order of the CIT(A) that the same was not covered by Section 115BBA of the ITA	120,000
3	Payment to ICC as per Resolution dated 2 February 1993 in connection to the expenses incurred by ICC for the tournament and for development of cricket	The payment did not have connection to the income of ICC taxable in India	375,000
4	Payment for qualifying matches held outside India	The payment did not have any connection with any match played in India	200,000
5	Guarantee money paid to South Africa and United Arab Emirates which did not play any match in India	It could not be said the income was earned through a source of income in India	360,000
6	Guarantee money paid to Australia, England, New Zealand, Sri Lanka and Kenya with whom double taxation avoidance agreements exist	These associations did some activities in India and were considered to earn the guarantee money through such activity. However, since some matches were played outside India, the payment in ratio to the matches played in India vis-à-vis total matches accrued and arose in India. Withholding tax was applicable on such portion of payment.	885,000
7	Guarantee money paid to Pakistan, West India, Zimbabwe and Holland		710,000
Total			**4,350,000**

- Both the taxpayer and the Revenue filed appeals before the High Court (HC). The HC dismissed Revenue's petition and with respect to taxpayer's appeal upheld the decision of the ITAT.
  - The HC observed that unlike Section 195 of the ITA, Section 194E of the ITA does not consider whether income is chargeable to tax or not. Hence, once income accrued, the withholding tax provisions applied.
  - The HC held that obligation to withhold tax under Section 194E of the ITA was not affected by the Double Taxation Avoidance Agreement (DTAA) as withholding tax was not final payment of tax. Thus, irrespective of the existence of DTAA, the withholding tax obligation under Section 194E of the ITA was applicable once income accrued under Section 115BBA of the ITA.
- Aggrieved by the order of the HC, the taxpayer filed an appeal before the Supreme Court (SC).
  - The taxpayer contended that the payment was for grant of privilege and had nothing to do with the matches played in India. Further, the taxpayer relied on various cases[4] to contend that the income did not accrue in India and hence, was not subject to withholding tax.
  - The Revenue did not file an appeal against the order of the Hon'ble HC. Thus, the conclusion relating to payments referred to in Sr. No. 1 to 5 had attained finality and with respect to Sr. No. 6 and 7 the withholding tax liability was only to the extent of proportionate amount as referred by the ITAT.

Decision of the SC:

- The SC observed that the principal issue was whether any income accrued or arose or was deemed to have been accrued or arisen to the Non-resident Sports Associations (Associations) in India? If yes, then, whether tax was required to be withheld under Section 194E of the ITA?
- With regard to whether any income accrued or arose or was deemed to have accrued or arisen to the Associations in India:
  - The SC observed that the Associations had participated in the World Cup Cricket tournament, where cricket teams of these Associations had played various matches in India.
  - Though termed as guarantee money, the payments were intricately connected with the event where various cricket teams were scheduled to play and did participate in the event.
  - Thus, the SC held that the source of income was from playing matches in India and the payments made to the Associations accrued and arose or deemed to have accrued or arisen in India.
- With regard to whether tax was required to be withheld under Section 194E of the ITA:
  - The SC held that, if guaranteed amount paid or payable to Associations was in relation to any game or sports played in India, then the income-tax calculated as per Section 115BBA(1)(b) of the ITA is payable.
  - The expression 'in relation to' in Section 115BBA emphasised the connection between the game or sport played in India and the guarantee money paid or payable to the non-resident sports association. Once the connection was established, the tax liability under Section 115BBA of the ITA arose.

[4] G.E. India Technology Centre Pvt. Ltd. vs Commissioner of Income Tax and Another [2010] 327 ITR (SC); Patna High Court in Metallurgical and Engineering Consultant (India) Ltd. vs Commissioner of Income Tax [1999] 238 ITR 208 (Pat); Performing Right Society Ltd. vs CIT [1977] 106 ITR 11 (SC); Kerala High Court in Commissioner of Income Tax vs Manjoo and Co. [2011] 335 ITR 527 (Ker).

- The SC upheld the decision of the HC and held that withholding tax obligation under Section 194E of the ITA was not affected by the DTAA. The benefit of the DTAA could be pleaded by the deductee and if the case was made out, the amount would be refunded with interest.
- Thus, the SC held that payments made to the Associations were subject to withholding tax under Section 194E of the ITA.

Comments:

This ruling lays down the principle that withholding tax obligation under Section 194E of the ITA is not affected by taxability under the DTAA. Taxpayers should consider impact of the same while making payment to non-residents.

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