



## Global Business Tax Alert Sharp Insights

If payee is not identified and amount payable is not ascertained, no tax is required to be deducted at source from the provision for expenses.

**Issue no: GBTA/42/2015**

**In this issue:**

- Synopsis
- Facts
- Issues before the Tribunal
- Ruling of the Tribunal
- Comments
- Upcoming Dbriefs – Register
- Contacts

# Synopsis

The Chennai Tribunal in the case of Dishnet Wireless Limited, has held that in case of provision for expenses, if the payee is not identified and the amount payable is not ascertained, no tax is required to be deducted at source thereon.

## Facts

- The taxpayer company, Dishnet Wireless Limited was engaged in the business of providing telecommunication services, namely cellular services, data access services, etc. in various telecom circles in the country.
- A survey under section 133A of the Income tax Act, 1961 ('the Act') was conducted at the Registered office of the taxpayer during the financial year 2012-13.
- The Assessing officer (AO) passed an order under section 201(1) and 201(1A) for the assessment years 2007-08 to 2011-12, holding that there was a default in deduction of tax at sources on the below expenses:
  - Provision for site restoration expenses
  - Year-end provisions
  - Roaming charges
- The taxpayer took premises on long term lease, generally for a period of 20 years, for installing telecom equipment such as towers, etc. As per the terms of lease the taxpayer was required to restore the leased premises on 'as is basis' upon expiry of the lease period. The taxpayer made a provision for site restoration expenses. The AO contended that the tax should be deducted at source on the provision for site restoration expenses under section 194C of the Act.
- As regards to the year-end provisions the taxpayer submitted that it availed services such as address verification, credit certification, content development, etc. and at the year-end estimated the expenditure for the month of March, with respect to which invoice were yet to be received. The taxpayer contended that since the payee and the amount payable was not identifiable, no tax was required to be deducted on year-end provisions.

- With respect to the roaming charges, the taxpayer submitted that roaming charges is a facility provided by the cellular provider to its customer automatically to connect and receive voice calls and did not involve human intervention. The taxpayer relied on the Supreme Court decision in case of CIT v. Bharti Cellular Limited (2011) (330 ITR 239) and submitted that payment on account of roaming charges was not in the nature of technical fees and hence no tax was deductible thereon.
- The taxpayer filed an appeal before CIT(A) and the CIT(A) upheld the order of the AO.
- The taxpayer filed an appeal before the Tribunal.

## Issues before the Tribunal

- Whether the AO was correct in passing an order under section 201(1) / 201(1A) on the alleged grounds that the taxpayer had defaulted in deducting tax at source on provision for site restoration expenses, year-end provisions and roaming charges?

## Ruling of the Tribunal

### **Provision for Site Restoration Expenses**

- The Tribunal observed that the taxpayer made a provision for site restoration expenses to be incurred for dismantling the towers and restoring the site after termination of the lease period. The contractor and the amount to be paid to the contractor for site restoration were not identifiable.
- The taxpayer contended that the provision for site restoration expenses was made in accordance with the Accounting Standard 29 and no service had been received by the taxpayer at the time of making such provision. The taxpayer contended that there was no liability towards any party, for making the payment.
- The taxpayer relied on the decisions<sup>1</sup> wherein it was held that if the payee is not identifiable, no tax was required to be deducted at source.

---

<sup>1</sup> Decision of Delhi High Court in case of UCO Bank v. Union of India & Others in WP(C) 3563/2012, Industrial Development Bank of India v. ITO (2007) 293 ITR (AT) 267, DCIT v. Telco Construction Equipment Co. Limited (ITA No. 478/Bang/2012)(Bangalore Tribunal).

- The Tribunal observed that the provision amount was not credited to the account of any party or individual.
- The Taxpayer contended that, if the tax was to be deducted on the provision for site restoration expenses, it shall have to issue Form 16A prescribed under Rule 31(1)(b) of the Income tax Rules, 1962. The taxpayer contended that since the contractor was not identifiable, details such as name and address of the payee, PAN of deductee and the amount credited, were not available and hence the mechanism to fill Form 16A failed.
- The Tribunal observed that the contractor and the amount payable for the site restoration would be identified after the expiry of the lease period.
- Thus the Tribunal held that since the payee and the amount payable for site restoration was not identifiable, no tax was required to be deducted at source on the provision for site restoration expenses.

### **Provision for Year-end expenses**

- The Tribunal held that wherever the particulars and details are available and amount payable could be quantified on the last day of the financial year, the assessee has to necessarily deduct tax at source from the year-end provision for expense.
- In case, the AO finds that the payee could not be identified on the last day of financial year and the amount payable also could not be ascertained, the taxpayer may not be required to deduct tax in respect of that provision.
- The Tribunal restored the matter to the AO directing him to examine whether the payment and the payee were identifiable as on the last day of the financial year.

### **Roaming Charges**

- The Tribunal relied on the Supreme Court decision in case of Bharti Cellular Limited wherein it was held that in absence of human intervention, such services were not in the nature of technical services.
- The Tribunal held that no human intervention is required for connecting the roaming calls, once the configuration was made. The Tribunal held that roaming charges were not in the nature of fees for technical services and hence no tax was required to be deducted on the roaming charges.

# Comments

- This decision has reiterated the principle laid down by various courts that no tax is required to be deducted at source on the provision for expenses where the payee and the amount payable is not identifiable. However, the onus to prove that the payee and amount payable were not identifiable at the time of making provisions is with the assessee.
- The question of allowability of the provision for expenses was not before the Tribunal. The allowability of such provisions for expenses where the payee is not identified or the amount is not ascertainable should now be examined in view of the Income Computation and Disclosure Standards effective from financial year beginning 1 April 2015 onwards.

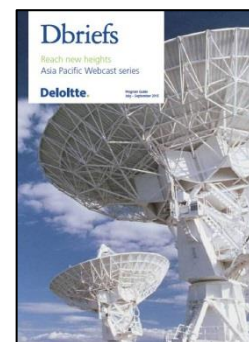
**Source:** Decision of Chennai Tribunal dated 20 July 2015 in the case of Dishnet Wireless Limited v. The Deputy Commissioner of Income-tax, TDS Circle -1 (ITA No. 320 to329/Mds/2014)

## Upcoming Dbriefs - Register

### India's Finance Act and Recent Developments: The Road Ahead

**Tuesday, 28 July, 2:30 PM – 3:30 PM IST**

The proposals of the Indian Finance Act 2015 are now in force and there are significant developments for foreign investors. In addition to the amendments in law by the Finance Act, there have been several other developments on the tax front. What are the amendments in law and recent developments you need to be aware of? Stay up to date with the latest international tax developments in India.



[Register now](#)

# Contacts

## Ahmedabad

Heritage, 3rd Floor,  
Near Gujarat Vidyapith,  
Off Ashram Road,  
Ahmedabad – 380 014.  
Tel: + 91 (079) 2758 2542  
Fax: + 91 (079) 2758 2551

## Coimbatore

Shanmugha Manram  
41, Race Course,  
Coimbatore  
Tamil Nadu - 641018  
Tel: + 91 (0422) 439 2801  
Fax: +91 (0422) 222 3615

## Kolkata

Bengal Intelligent Park Building Alpha,  
1st floor, Block EP and GP Sector V,  
Salt Lake Electronics Complex,  
Kolkata - 700 091.  
Tel : + 91 (033) 6612 1000  
Fax : + 91 (033) 6612 1001

## Bangalore

Deloitte Centre, Anchorage II,  
100/2, Richmond Road,  
Bangalore 560 025.  
Tel: +91 (080) 6627 6000  
Fax: +91 (080) 6627 6010

## Delhi/Gurgaon

Building 10,  
Tower B, 7th Floor,  
DLF Cyber City,  
Gurgaon 122 002  
Tel : +91 (0124) 679 2000  
Fax : + 91 (0124) 679 2012

## Mumbai

Indiabulls Finance Centre,  
Tower 3, 28th Floor,  
Elphinstone Mill Compound,  
Senapati Bapat Marg, Elphinstone (W),  
Mumbai – 400013  
Tel: + 91 (022) 6185 4000  
Fax: + 91 (022) 6185 4101

## Chennai

No.52, Venkatanarayana Road,  
7th Floor, ASV N Ramana Tower,  
T-Nagar,  
Chennai 600 017.  
Tel: +91 (044) 6688 5000  
Fax: +91 (044) 6688 5050

## Hyderabad

1-8-384 and 385, 3rd Floor,  
Gowra Grand S.P.Road,  
Begumpet,  
Secunderabad – 500 003.  
Tel: +91 (040) 6603 2600  
Fax: +91 (040) 6603 2714

## Pune

106, B-Wing, 7<sup>th</sup> Floor,  
ICC Trade Tower,  
Senapati Bapat Road,  
Pune – 411 016.  
Tel: + 91 (020) 6624 4600  
Fax: +91 (020) 6624 4605

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India Private Limited (DTTIPL) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites). DTTIPL is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTIPL, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this material, rendering professional advice or services. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2015 Deloitte Touche Tohmatsu India Private Limited. Member of Deloitte Touche Tohmatsu Limited

[Home](#) | [Add Deloitte as a safe sender](#)

Follow us on:

