India | Tax & Regulatory | 17 June 2015

Global Business Tax Alert
Sharp Insights

Tribunal rules that no tax is required to be deducted on the additional liability arising on account of foreign exchange fluctuation at the time of payment

Issue no: GBTA/22/2015

In this issue:

Synopsis

The Delhi Tribunal in the case of Honda Motorcycle & Scooters India (P.) Ltd. has held that once tax was deducted at the time income was credited to the account of payee, by converting foreign currency into telegraphic transfer ("TT") buying rate on that date, then the taxpayer could not be called upon to deduct tax at source on the additional liability arising due to foreign exchange fluctuation at the time of payment.

Facts

- The taxpayer had acquired technical know-how in respect of certain automobile models, which was capitalized as an intangible asset and depreciation was claimed thereon.
- At the time of acquisition, the taxpayer translated the invoice value from Japanese Yen into Indian Rupee at the rate prevailing at that time and credited the converted amount of Rs.141.47 crores to the account of the foreign supplier. Tax was duly deducted by the taxpayer on the said amount of Rs. 141.47 crores.
- On the date of actual payment due to fluctuation in exchange rate, the acquisition price increased to Rs.146.70 crores. The taxpayer accordingly suffered foreign exchange loss of Rs.5.22 crores.
- Depreciation was claimed by the taxpayer on the increased acquisition price of Rs.146.70 crores. No tax was deducted by the taxpayer on the additional liability of Rs. 5.22 crores arisen on account of foreign exchange fluctuation.
- As no tax was deducted by the taxpayer on the additional liability, the Assessing Officer ("AO") invoked the provisions of section 40(a)(i) of the Income-tax Act, 1961 ("ITA") to disallow the depreciation of Rs.1.31 crores on the corresponding amount of Rs.5.22 crores.
- The order of the AO was upheld by the Commissioner of Income-tax (Appeals).

Issue before the Tribunal

Whether depreciation on the foreign exchange loss arising at the time of payment of model fees, should be disallowed as no tax was deducted on the said foreign exchange loss.

Ruling of the Tribunal

- The Tribunal observed that the stage of deduction of tax at source has been set out by section 195 of the ITA, which clearly provides that the deduction should be made at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.
- The Tribunal held that deduction of tax at source is contemplated at the earlier of the dates of credit or payment to the payee and not on both the occasions. Once deduction of tax at source has been made at the time of credit, which event occurs first, then no deduction of tax at source is required at the time of payment.
- The ITA does not require two phased deduction of tax at source on the same transaction, one at the time of credit and second at the time of actual payment.
- Whether there is a foreign exchange loss or gain, deduction of tax at source under section 195 is contemplated only at the first stage of the credit of income to the account of the payee and the higher or lower liability due to foreign exchange loss or foreign exchange gain is inconsequential for deduction of tax at source under section 195.
- The Tribunal thus held that once there is no default on the part of the taxpayer in making deduction of tax at source, there can be no question of making any disallowance under section 40(a)(i).
- The non-obstante clause in the operating part of section 43A of the ITA makes it explicitly clear that it is this provision which shall apply in supersession of any other contrary provision in so far as the computation of actual cost of an asset due to change in the rate of foreign currency, is concerned.
- The Tribunal stated that the interpretation as suggested by the Revenue in not considering the adjusted cost as the cost of acquisition of capital asset for allowing depreciation, results into distortion of the provisions of section 43A, which is impermissible. The Tribunal held that there can be no question of adopting unadjusted

cost of acquisition of asset for allowing depreciation by invoking the provisions of section 40(a)(i) in as much as the depreciation is allowable with reference to the adjusted cost of acquisition of the asset in terms of section 43A.

Comments

The Tribunal in this decision has held that deduction of tax at source has to made once will be earlier of the dates of credit or payment to the payee. The Tribunal accordingly held that no tax is required to be deducted on the additional liability arising on account of foreign exchange fluctuation at the time of payment. Further, depreciation has to be computed on the adjusted cost including the foreign exchange fluctuation and the same cannot be denied on the ground of non-deduction of tax at source.

Source: Delhi Tribunal decision in the case of Honda Motorcycle & Scooters India (P.) Ltd. v. ACIT (56 taxmann.com 238)

Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the **Dbriefs** page.

Contacts

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

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

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

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

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

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

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

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

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