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Sharp Insights

Lionbridge Technologies Private Limited (Mum ITAT)

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Mumbai ITAT in the case of Lionbridge Technologies Pvt Ltd (assessee) held that cost to cost reimbursements made to overseas group company which are not chargeable to tax are not liable for tax withholding u/s 195 of the Act.

The brief facts of the case were that assessee, an Indian company, made payments to its parent company, Lionbridge USA, towards reimbursement of cost of software. Lionbridge USA had entered into an agreement with vendors like Microsoft Inc. for the purchase of standard off-the-shelves software to be used by Lionbridge group entities across the globe. The cost of the purchase of the software has been allocated amongst various group entities without any mark-up. Accordingly, assessee reimbursed its share of cost to Lionbridge USA.

The issue for consideration before the Tribunal was whether cost to cost reimbursements made outside India towards cost of software is liable for tax withholding under section 195 of the Income Tax Act, 1961 (Act).

Mumbai ITAT observed that it is pure case of reimbursement of cost and admittedly, there is no mark-up involved. ITAT further noted that no assessment has been made in the hands of the recipient (Lionbridge US) in respect of reimbursements received by it from India. It was observed that in the present case, Lionbridge US has not developed software which has been given for use to the assessee, rather, the software was purchased from Microsoft, the cost of which has been distributed amongst all group entities.

Hon'ble ITAT relied on the decision of Supreme Court in the case of G E India Technology Centre P Ltd and observed that a person paying any sum to a non-resident is not liable to deduct tax if such sum is not chargeable to tax under the Act. ITAT reiterated the following reasoning in support of this proposition:

- The most important expression in Section 195(1) consists of the words 'chargeable under the provisions of the Act'. A person paying any sum to a non-resident is not liable to deduct tax if such sum is not chargeable to tax under the Act.
- If the contention of the Department is to be accepted that the moment there is remittance the obligation to deduct tax at source arises, then the words 'chargeable under the provisions of the Act' in Section 195(1) become otiose. Further, in such case, the consequence would be that the Department would be entitled to appropriate the moneys deposited by the payer even if the sum paid is not chargeable to tax because there is no provision in the Act by which a payer can obtain refund.

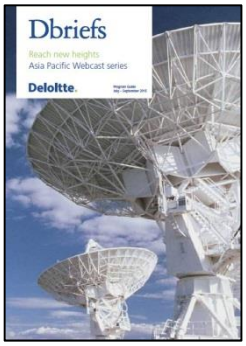
- There are adequate safeguards in the Act which would prevent revenue leakage in case tax is not deducted. Section 40(a)(i) provides that deduction shall not be allowed if assessee fails to deduct tax in respect of payments made outside India which are chargeable as per the Act. Similarly, Section 195(6) requires the payer to furnish information relating to payment of any sum in such form and manner as may be prescribed by the Board.
- The expression 'sum chargeable under the provisions of the Act' is used only in Section 195 and no other section under Chapter XVII-B uses this expression. Therefore, meaning and effect has to be given to the said expression.
- Section 195 has to be read in conformity with the charging provisions, i.e., Sections 4, 5, 9, 90, 91

Relying upon the above observations of Supreme Court, it was held that assessee was not liable to deduct TDS on reimbursement of cost of software as sum paid to non-resident i.e. Lionbridge US was not chargeable to tax in India.

Upcoming Dbriefs - Register

How do the New GST Rules Compare: India, Malaysia, and the OECD International VAT Guidelines? Chalk and Cheese?

On 22 September 2015 from 02:30 PM to 03:30 PM IST



In Asia Pacific, there are many new indirect tax systems being introduced. The Malaysian GST went live on 1 April 2015, and India moves forward with a dual GST that may be in force as early as 2016. What are the latest developments in the two countries? Stay current and and out how this may affect the way your business handles cross-border transactions and in-country transactions in both goods and services. For more information, visit the **Dbriefs** page.

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