



Global Business Tax Alert

Sharp Insights

¹Bangalore Tax Tribunal holds date of reversal of provisions important to decide whether income in respect of year-end provisions has accrued to payee or not

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¹ M/s. Toyota Kirloskar Motors Private Limited v/s the Income-tax Officer (TDS) [ITA No. 1185/Bang/2014]

Background / Facts

- Toyota Kirloskar Motors Private Limited [the Company] had created certain year-end provision for expenses in Financial Year [FY] 2011-12. The same was disallowed under section 40(a)(ia)/40(a)(i) of the Income-tax Act, 1961 [Act] while computing total income for the Assessment Year [AY] 2012-13.
- However, the Company in subsequent AYs reversed the said provisions for expenses after a gap of 6 to 22 months from the date of creation.
- The Company also claimed the said reversal of provisions as deduction, while computing the total income of those AYs in which the said provisions were reversed.
- Subsequently, the TDS Officer treated the Company as 'assessee in default' in relation to non-deduction of taxes on year-end provisions and initiated proceedings under section 201(1) of the Act.
- The Commissioner of Income tax (Appeals) upheld the order of the TDS Officer. Subsequently, the Company preferred an appeal before the Hon'ble Bangalore Income Tax Tribunal [ITAT] against the order of TDS Officer.
- During the course of hearing before the ITAT, the Company based its contention on the decision of the Hon'ble Karnataka High Court in the case of Karnataka Power Transmission Corporation Limited vs. DCIT [2016] (383 ITR 59), wherein the provision was created by book entries and a corresponding reversal was made in the books of account during the next financial year. In the said case, it was held that there would be no liability to deduct tax under section 194A of the Act, as no income had accrued in the hands of the payee.
- Further, to justify its claim, the Company cited on the decision of the Bangalore Tax Tribunal in the case of M/s. Bosch Limited vs. ITO (ITA No. 1583/Bang/2014) and M/s. TE Connectivity India Private Limited vs. ITO (ITA No 3/Bang/2015), wherein the provision was made at the end of the year and the same was reversed in the beginning of the subsequent accounting year. In both cases it was held that, there was no liability for the assessee company to deduct TDS, merely on the provisions made at the year end, as no income had accrued in the hands of the payee.

Issue for consideration

The ITAT examined the issue that if the provision for expenses have been reversed in the subsequent year, whether the income has accrued to the payee or not and whether proceedings under section 201(1) of the Act would be applicable?

Ruling of the Bangalore ITAT

- The Bangalore ITAT rejected the contention of the Company and held that the above rulings relied upon, would not be applicable in the Company's case. As in the aforesaid cases (i.e. M/s. Bosch Limited vs. ITO (ITA No. 1583/Bang/2014) and M/s. TE Connectivity India Pvt. Ltd. vs. ITO (ITA No 3/Bang/2015)), the provisions were made at the end of the previous year and the same were reversed in the beginning of the next accounting year. However, in the

Company's case the reversals have happened at a later period (i.e. after 6 to 22 months).

- The ITAT held that when the provision is made at the end of the accounting year and reversal is made at the very beginning of the next accounting year, it might be considered that income would not have accrued to the payee.
- The ITAT held that the date of reversal of expenses is very important to decide whether the income has accrued to the payee or not.
- Further, relying on the case of IBM India (P.) Ltd. Vs. ITO [2015] (59 taxmann.com 107), ITAT held that, when the assessee himself has admitted his default u/s. 40(a)(i) and 40(a)(ia) of the Act, then assessee cannot argue that there was no liability under section 201 and 201(1A) of the Act.

Conclusion

The ITAT has given a finding that as the provision has not been reversed in the beginning of the subsequent year (i.e. reversal has happened at a later stage), income has accrued in the hands of the payee.

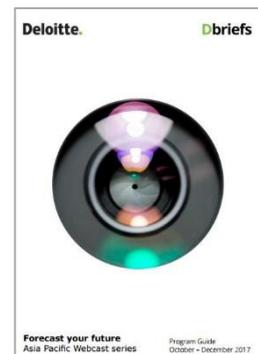
Further, it has also held that, where the assessee himself has admitted his default u/s. 40(a)(i) and 40(a)(ia) of the Act, then the assessee cannot argue that there was no liability under section 201 and 201(1A) of the Act.

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