



## Global Business Tax Alert Sharp Insights

Mere passing of book entries which are subsequently reversed would not give rise to an obligation to withhold tax by the payer in case of transactions covered u/s 195

**Issue no: GBTA/57/2015**

**In this issue:**

Do you know about Dbriefs?  
Contacts

The Delhi High Court in its judgment in the case of DIT v. Ericsson Communications Ltd. (“assessee”) has held that the obligation of the person to withhold tax u/s 195 would arise only if the payer owes a sum (chargeable under the Income Tax Act) to the non-resident and such sum is acknowledged as a debt payable by the person to such non-resident.

The assessee was engaged in the business of installation and commissioning of telecom projects. The assessee is a wholly owned subsidiary of TLME, a Swedish entity.

The assessee entered into an agreement with TLME for use of TLME's trademark 'Ericsson'. In terms of the said agreement, the assessee was required to pay royalty @1% of total sales to TLME. In order to account for royalty payable, the assessee debited 'Royalty Account' and credited 'Accrued Expenses Account'. Subsequently, the assessee passed another entry in its books transferring the credit balance to the account of TLME. The assessee neither deducted nor paid any taxes at source in respect of the amount credited to the account of TLME. Further subsequently, the assessee reversed the entries passed in its books of accounts because it was denied permission by the Government to remit any royalty to TLME. The assessee debited the account of TLME and credited Royalty Account; thereby the entries passed earlier were nullified.

The AO passed an order u/s 201(1) holding that the assessee had defaulted in deducting tax deducted at source on the amount of royalty credited by assessee to the account of TLME. The CIT(A) upheld the order of AO. ITAT decided in favor of assessee. Revenue filed appeal an appeal before the High Court.

In its arguments, the Revenue referred to S. 195 and submitted that the obligation to deduct tax at source is not contingent on payment being made and the payer is required to deduct tax at source even on the amounts being credited in its books of accounts. The Revenue further submitted that the question whether the amount credited included any element of income or not was not to be determined by the assessee.

The High Court held that in view of the plain language of S. 195(1) of the Act, there can be no dispute that the obligation of a payer to deduct tax at source arises when the amounts payable are credited into the accounts of the payee, even if the same is credited prior to making the payment thereto. However, this obligation is contingent on the amount credited being chargeable to tax under provisions of the Act.

The High Court further held that the machinery sections of collection and recovery of tax cannot be read in isolation of the charging provisions. S. 195 of the Act is a part of the machinery provisions for collection of tax and would be applicable only in respect of total income of a non-

resident which falls within the scope of S. 5(2) of the Act. The credit of any amount to the account of a non-resident or foreign company, maintained in the books of the payer, would be subject to withholding tax only if credit of such amount reflects accrued income in the hands of the payee, which is chargeable to tax under the Act. For this purpose, the High Court relied on the Supreme Court judgment in the case of GE India Technology Centre P. Ltd. (327 ITR 456).

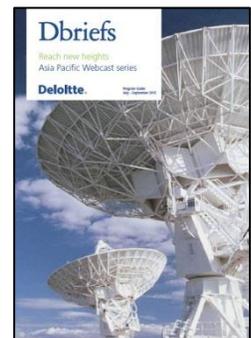
The High Court observed that the rationale for imposing an obligation to deduct tax at source on a credit entry being passed by a payer in favor of payee, is that such entry represents an acknowledgement of debt by a payer in favor of a payee; the debt acknowledged is in respect of an income that has accrued in favor of the payee; and such income is exigible to tax under the Act.

The High Court concluded by holding that mere passing of book entries, which are reversed, would not give rise to an obligation to deduct tax at source by the assessee, as clearly, there is no debt that can be said to be acknowledged by the assessee. Imposition of an obligation to deduct tax at source in these circumstances would amount to enforcing payments from one person towards a tax liability of another, even where the person does not does not acknowledge that any sum is payable. This, in High Court's view, is contrary to the scheme of provisions relating to deduction of tax at source under the Act.

This ruling has reiterated that where a sum is not exigible to tax in the hands of non-resident, there is no requirement for the payer to withhold tax at source.

## 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](#)



 Download the report

# 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, 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:

