



Global Business Tax Alert Sharp Insights

Section 206AA of the Act
does not override the
provisions of DTAA

Issue no: GBTA/6/2015

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Synopsis

The Pune Bench of the Tribunal has held that where tax has been deducted on the strength of the beneficial provisions of DTAA's, the provisions of section 206AA of the Act cannot be invoked to insist on tax deduction @ 20%, having regards to the overriding nature of the provisions of section 90(2) of the Act.

Facts

- The taxpayer is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacture and sale of vaccines and it is a major exporter of the vaccines.
- In the course of its business, the taxpayer made payments to non-residents on account of interest, royalty and fees for technical services.
- The taxpayer deducted tax at source from such payments in accordance with the tax rates provided in the Double Taxation Avoidance Agreements (“DTAAs”) with the respective countries, as the rates provided in the DTAA's were lower than the rate prescribed under the Act.
- The Assessing Officer noted that in case of some of the non-residents, the recipients did not hold Permanent Account Number (PAN).
- The Assessing Officer therefore treated said payments as cases of ‘short deduction’ of tax in terms of the provisions of section 206AA of the Act and demand was raised for short deduction of tax and also for interest under section 201(1A) of the Act.
- An appeal was filed before the CIT(A) by the taxpayer in relation to the aforesaid demand raised.
- The CIT(A) held the following:
 - Section 206AA of the Act would override the provisions of the Act but not the provisions of section 90(2) of the Act.
 - Where the DTAA's provide for a tax rate lower than that prescribed in section 206AA of the Act, the provisions of the DTAA's shall prevail and the provisions of section 206AA of the Act would not be applicable.

- Aggrieved by the order of the CIT(A), an appeal was filed by the tax authorities.

Issue before the Tribunal

Whether the CIT(A) has erred in concluding that section 206AA of the Act is not applicable in case of non-residents since as per the provisions of section 90(2) of the Act the provisions of the DTAA overrides the provisions of the Act.

Ruling of the Tribunal

- The Tribunal concurred with the CIT(A) finding that the provisions made in the DTAA's will prevail over the general provisions contained in the Act, to the extent they are beneficial to the assessee, as upheld by the Hon'ble Supreme Court in the case of *Azadi Bachao Andolan and Others*¹.
- It would also be relevant to observe that even the charging section 4 as well as section 5 of the Act which deals with the principle of ascertainment of total income under the Act are also subordinate to the principle enshrined in section 90(2), as held by the Hon'ble Supreme Court in the case of *Azadi Bachao Andolan and Others*.
- It would be quite incorrect to say that though the charging section of the Act and section 5 of the Act dealing with ascertainment of total income are subordinate to principle enshrined in section 90(2) of the Act but the provisions of Chapter XVII-B governing tax deduction at source are not subordinate to section 90(2) of the Act.
- Section 206AA of the Act cannot be understood to override the charging sections 4 and 5 of the Act.
- Section 206AA of the Act is not a charging section but is a part of a procedural provisions dealing with collection and deduction of tax at source.
- Where the tax has been deducted on the strength of the beneficial provisions of DTAA's, the provisions of section 206AA of the Act cannot be invoked by the Assessing Officer to insist on the tax deduction @ 20%, having regards to the overriding nature of the provisions of section 90(2) of the Act.

¹ 263 ITR 706 (SC)

- The CIT(A) has correctly inferred that section 206AA of the Act does not override the provisions of section 90(2) of the Act and that in the impugned cases of payments made to non-residents, assessee correctly applied the rate of tax prescribed under the DTAA's and not as per section 206AA of the Act because the provisions of the DTAA's was more beneficial.

Comments

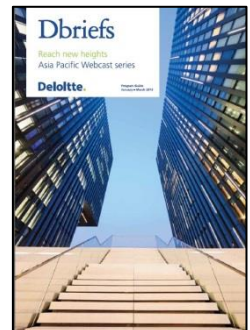
The Tribunal has taken a view that the provisions of DTAA override the provisions of section 206AA of the Act. The said view is likely to be challenged by the income tax department.

Source: Decision of the Pune Bench of the Tribunal in the case of Dy. Director of Income Tax (IT-II), Pune v. Serum Institute of India Limited (ITA No. 792/PN/2013)

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