

Deduction, Collection and Recovery of Tax

Some Key Points : Recent Amendments

(a) Table showing comparative position of TDS provisions prior to and from 1.7.2012 consequent to amendment by the Finance Act, 2012

Section	Upto 30.6.2012	On or after 1.7.2012
193	Exemption under clause (v) of the proviso available only in respect of payment of interest – (i) on debentures listed in a recognized stock exchange; (ii) to resident individuals; (iii) not exceeding ₹ 2500 in aggregate	Exemption under clause (v) of the proviso available only in respect of payment of interest – (i) on debentures, whether or not listed in a recognized stock exchange; (ii) to resident individuals and HUFs (iii) not exceeding ₹ 5,000 in aggregate.
194E	TDS@10% on certain payments or credits to – (i) non-resident sportsman, who is not a citizen of India; or (ii) non-resident sports associations or institutions.	TDS @ 20% on certain payments or credits to - (i) non-resident sportsman who is not a citizen of India; or (ii) non-resident sports associations or institutions; or (iii) non-resident entertainer who is not a citizen of India.
194J	Directors' remuneration, fees and commission not included within the scope of section 194J.	Directors' remuneration, fees and commission, by whatever name called, other than in the nature of salary on which tax is deductible under section 192, included within the scope of section 194J.
194LA	TDS provisions attracted if payment or aggregate payment of compensation on compulsory acquisition of immovable property exceeds ₹ 1 lakh.	TDS provisions attracted if payment or aggregate payment of compensation on compulsory acquisition of immovable property exceeds ₹ 2 lakh.

(b) Tax to be collected at source on sale of certain minerals to be used for trading purposes [Section 206C(1)]

For collecting tax at the earliest point of time and improving reporting mechanism of transactions in mining sector, the Finance Act, 2012 has provided that tax at the rate of 1% shall be collected by the seller from the buyer of the certain minerals, namely, coal, lignite or iron ore.

However, the seller shall not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilized for the purposes of manufacturing, processing or producing articles or things or for generation of power and not for trading purposes.

(c) Cash sale of jewellery or bullion exceeding specified threshold to attract TCS [Section 206C(1D)]

Sub-section (1D) has been inserted in section 206C to provide that tax is to be collected at source@1% of sale consideration by the seller from the buyer, where the sale of jewellery or bullion (excluding any coin or any other article weighing 10 grams or less) is in cash and the sale consideration –

- (1) for jewellery exceeds ₹ 5 lakh,
- (2) for bullion exceeds ₹ 2 lakh

In such cases, tax has to be collected at source by the seller from the buyer irrespective of the purpose of its use, whether for manufacturing or trading or for personal use.

- (d)** Payer not to be treated as an assessee-in-default for non-deduction of tax at source, if such tax is paid by the resident payee & due date of filing the return of the payee would be deemed as the date of payment of taxes [Section 201]
- (e)** Senior Citizens (i.e., resident individuals of the age of 60 years or more), not having profit and gains of business or profession, exempt from payment of advance tax [Section 207]
- (f)** No reduction of 'tax deductible but not deducted' and 'tax collectible but not collected', while computing advance tax liability [Section 209]

Question 1

B. Airways Ltd. sold tickets to the travel agents in India at a minimum fixed commercial price. The agents were permitted to sell the tickets at a higher price, however, up to a maximum of published price. Commission at the rate of 9% of published price was payable to the agents of the airlines company, on which tax was deducted under section 194H by the company. The Assessing Officer raised the issue of further liability of tax deduction at source on the amount of difference between the published price and the minimum fixed commercial price by treating it as "additional special commission" in the hands of the agents.

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Whether the contention raised by the Assessing Officer is tenable in law? Critically examine.

Answer

As per the provisions of section 194H, a person is liable to deduct tax at source at the time of credit or payment, whichever is earlier, of income in the nature of commission to any resident.

In the present case, B. Airways Ltd. correctly deducted tax at source under section 194H from the commission@9% of the published price paid to the travel agents, who were allowed to sell the air tickets at any price higher than the minimum fixed commercial price subject to a maximum of published price. However, the Assessing Officer raised a contention that the airline company was required to deduct tax at source on the difference between the published price and the minimum fixed commercial price by treating it as “additional special commission” in the hands of the agents.

The facts of the case are similar to the case of *CIT v. Qatar Airways (2011) 332 ITR 253*, where the Bombay High Court held that **the difference between the published price and the minimum fixed commercial price of the tickets cannot be taken as “additional special commission” in the hands of the agents. This is because the published price was the maximum price and the airline company had granted permission to the agents to sell the tickets at a price lower than the published price.** Further, the airline company would have no information about the exact rate at which the tickets were ultimately sold by its agents. **In order to deduct tax at source on the difference between actual sale price and minimum fixed commercial price, the exact income in the hands of the agents must necessarily be ascertainable by the airline company. However, it is not so ascertainable in this case, since the agents had been given discretion to sell the tickets at any rate between the minimum fixed commercial price and the published price.** It would be impracticable and unreasonable to expect the airline company to get a feedback from its numerous agents in respect of the price at which tickets were sold by them.

Applying the rationale of the above case to the case on hand, B. Airways Ltd. is not liable to deduct tax at source under section 194H on the difference between the published price and the minimum fixed commercial price, even though the amount earned by the agent over and above minimum fixed commercial price would be taxable as income in the hands of the agent.

Therefore, the contention raised by the Assessing Officer is not tenable in law.

Question 2

In order to overcome a situation where the tax is deducted at a rate prescribed in the relevant Double Taxation Avoidance Agreement which is higher than the rate prescribed in the Income-tax Act, 1961, CBDT recently has clarified this issue, to avoid genuine hardship faced by the resident deductor. Explain, in brief, the contents of this CBDT circular.

Answer

The CBDT had issued *Circular No.7/2007, dated 23.10.2007* laying down the procedure for refund of tax deducted at source under section 195 to the person deducting tax at source from

the payment to a non-resident. The Circular allowed refund of tax deducted at source to the person making payment to a non-resident in certain circumstances, for example, if the income does not accrue to the non-resident or if the income is accruing, no tax is due but tax has been deducted, or tax has been deducted at a higher rate specified in the Income-tax Act, 1961, whereas it is deductible at a lower rate under the relevant DTAA.

A similar situation arises in a case where tax is deducted at a rate prescribed in the relevant DTAA which is higher than the rate prescribed in the Income-tax Act, 1961. This situation is, however not included in the list of circumstances covered under the above Circular of the CBDT. Since the law requires deduction of tax at a rate prescribed in the relevant Double Taxation Avoidance Agreement (DTAA) or under the Income-tax Act, 1961, whichever is lower, there is a possibility that in such cases, excess tax is deducted relying on the provisions of relevant DTAA.

Accordingly, in order to remove the genuine hardship faced by the resident deductor, the CBDT has, vide *Circular No. 7/2011 dated 27-09-2011*, modified *Circular No.07/2007, dated 23.10.2007* to the effect that the beneficial provisions under the said Circular allowing refund of excess tax deducted at source under section 195 to the deductor shall also apply to those cases where tax has been deducted at source at a higher rate as mentioned in the relevant DTAA while a lower rate is prescribed under the domestic law.

Question 3

What are the consequences of not collecting tax at source (TCS) in respect of sale of scrap by a manufacturing company? State the circumstances under which the TCS provisions are not applicable in the above case.

Answer

As per section 206C, every person being a seller of, *inter alia*, scrap, shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the buyer, whichever is earlier, collect tax at source@1% of the said amount from the buyer. If the seller does not collect tax at source on sale of scrap, then, the following would be the consequences:

- (i) He shall be deemed to be an assessee in default in respect of the tax not collected.
- (ii) He shall be liable to pay the tax, which he ought to have collected, to the credit of the Central Government, even if he has not actually collected the tax.
- (iii) He shall be liable to pay simple interest at the rate of 1% per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter.
- (iv) Penalty equal to the amount of tax which is not collected can be levied under section 271CA.

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Note: However, the seller who does not collect tax at source shall not be deemed to be an assessee in default in respect of such tax if the buyer –

- (i) has furnished his return of income under section 139;
 - (ii) has taken into account such sum for computing income in such return of income; and
 - (iii) has paid the tax due on the income declared by him in such return of income,
- and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

In such cases, the buyer shall be liable to pay interest from the date on which such tax was collectible to the date of furnishing of return of income by such buyer.

However, he would not be liable to collect tax at source in the following cases:

- (i) If the buyer is a resident and he furnishes to the person responsible for collecting tax, a declaration in the prescribed form to the effect that scrap is to be utilized for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.
- (ii) If scrap is sold to a public sector company, the Central Government, a State Government, an embassy, a high commission, legation, commission, consulate and the trade representation of a foreign State or a club.
- (iii) If the buyer, in the retail sale of scrap, has purchased the scrap for his personal consumption.

Question 4

ABC JET Limited, an airline company, pays landing and parking charges to the Airports Authority of India. Discuss whether the company is required to deduct tax at source from such payment.

Answer

This issue as to whether landing and parking charges could be deemed as rent to attract the provisions of section 194-I came up before the High Court in the cases of *CIT v. Japan Airlines Co. Ltd.* (2010) 325 ITR 298 and *United Airlines v. CIT* (2006) 287 ITR 281.

The Court observed that rent as defined in section 194-I had a wider meaning than “rent” in common parlance. It included any payment under any agreement or arrangement for use of, *inter alia*, land. When the wheels of the aircraft coming into an airport touch the surface of the airfield, use of the land of the airport immediately begins. Similarly, for parking the aircraft in that airport, again, there is use of the land. Therefore, the landing and parking fee were “rent” within the meaning of the provisions of section 194-I as they were payments for the use of the land of the airport.

Applying the rationale of the above ruling to the case on hand, the payment of landing and parking charges by ABC JET Ltd., an airline company, to the Airports Authority of India is in

the nature of rent, and accordingly, the provisions of tax deduction at source under section 194-I would be attracted, if the aggregate rental income during the year is ₹ 1,80,000 or more.

Note: Recently, the Madras High Court has, in *CIT v. Singapore Airlines Ltd.*, held that use of land for which landing and parking charges were paid, which is in the nature of maintenance of the various services provided by the Airport Authorities, including the technical services involving navigation, would not automatically bring the transaction and the charges within the meaning of either lease or sub-lease or tenancy or any other agreement or arrangement of a nature of lease or tenancy to fall within the definition of "rent" as per section 194-I. With regard the runway usage by an aircraft, it could be no different from the analogy of a road used by any vehicle or any other form of transport. If the use of tarmac could be characterised as use of land, so too the use of a road would be a use of land. Such use would not fall under the expression "use of land". Therefore, going by the nature of services offered by the Airport Authority of India for landing and parking charges collected from the assessee, the payment would not fit in with the definition of 'rent' as given under Section 194-I.

Question 5

A sum of ₹ 60,000 was paid to Mr. Dastur, an advocate, on 1st July, 2012 towards fees for his professional services without deducting tax at source. Later on, a further sum of ₹ 70,000 was due to him on 27th February, 2013 from which tax of ₹ 13,000 was deducted at source. The tax so deducted was deposited on 25th June, 2013. Compute interest payable by the deductor under section 201(1A).

Answer

In this case, tax is deductible@10% under section 194J in respect of fees for professional services. Since there has been a delay in deduction and deposit of tax, interest under section 201(1A) is attracted.

As per the provisions of section 201(1A), if a person who is liable to deduct tax at source fails to deduct tax at source or after deducting such tax, fails to pay the tax as required by the Act, then he is liable to pay interest as follows -

- (i) 1% for every month or part of month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.
- (ii) 1½% for every month or part of month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.

Therefore, in the given case, interest under section 201(1A) would be computed as follows –

	₹
1% on tax deductible but not deducted i.e., 1% on ₹ 6,000 for 8 months	480
1½% on tax deducted but not deposited i.e. 1½% on ₹ 13,000 for 4 months	780
Total interest payable under section 201(1A)	1,260

Question 6

The procedure relating to the recovery of tax due or the arrears of taxes from a non-resident is different than the resident assessee. Comment and state how such recovery is to be made along with its limitation.

Answer

The provisions for recovery of tax in respect of non-residents are contained in section 173. According to this section, the tax chargeable on the income, which is deemed to accrue or arise in India under section 9(1)(i), in the name of the non-resident or his agent who is liable as a representative assessee, maybe recovered by deduction of tax at source under any of the provisions of Chapter XVII-B.

Any arrears of tax may be recovered also in accordance with the provisions of the Income-tax Act, 1961. However, the limitation contained in section 173 is that such recovery can be made only from any assets of the non-resident which are within India or which may at any time come within India.

Note:

The provisions for recovery of tax in respect of non-residents and the limitation thereto required for in the question can be answered on the basis of the provisions of section 173.

However, students may note that in a case where the Central Government has entered into an agreement for recovery of tax with the Government of the country where the non-resident resides, the provisions of section 228A provide for an exception to the limitation contained in section 173.

Under section 90A(1), the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for, inter alia, recovery of income-tax under the Income-tax Act, 1961 and under the corresponding law in force in that country or specified territory.

Section 228A provides for the procedure of recovery of tax in pursuance of an agreement entered into by the Central Government with the Government of any country outside India. Sub-section (2) thereof provides that where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India, forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

Question 7

Maya Bank credited ₹ 73,50,000 towards interest on the deposits in a separate account for macro-monitoring only by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest in respect of some deposits exceeded the limit of ₹10,000.

The Assessing Officer disallowed the entire interest expenditure where the interest on time deposits credited exceeded the limit of ₹10,000 and also levied penalty under section 271C.

Decide the correctness of action of the Assessing Officer.

Answer

The *Explanation* below section 194A(1) provides that where any income by way of interest other than interest on securities is credited to any account, whether called 'interest payable account' or 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and provisions of section 194A shall apply accordingly.

The CBDT vide *Circular No.3/2010 dated 02.03.2010* has clarified that *Explanation* to section 194A will not apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software.

Since no constructive credit to the depositor's / payee's account takes place while calculating interest on daily / monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.

In such cases, tax shall be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's or payee's requirement or on maturity or on encashment of time deposit, whichever event takes place earlier, whenever the aggregate amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

In view of the above, the action of the Assessing Officer in disallowing the interest expenditure credited in a separate account for macro monitoring purpose is not valid and consequent penalty proceedings are also not tenable in law.

Question 8

Siddharth Hospitals Pvt. Ltd., the assessee, has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make the payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C.

Answer

This issue has been clarified by the CBDT *Circular No.8/2009 dated 24.11.2009*. As per provisions of section 194J(1), any person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a resident any sum, *inter alia*, by way of fees for professional services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax on income comprised therein. Further, as per *Explanation (a)* to section 194J "professional services" includes services rendered by a person in the course of carrying on medical profession.

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The services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable on payments made by TPAs to hospitals etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

Question 9

LL Limited paid leave travel facility to its employees and considered exemption under section 10(5), based on the self-declaration furnished by the employees. The Assessing Officer held that the company as employer ought to have verified the genuineness of the claim of exemption by verifying the details of actual expenditure incurred for availing leave travel facility by the employees. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

Answer

Section 192 casts liability on the employer to deduct tax at source from the salary paid to its employees.

In this case, the employer has paid leave travel concession / facility to its employees and the concession / facility is eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962.

The Apex Court, in *CIT v. Larsen & Toubro Ltd* (2009) 313 ITR 1, held that the employer is not under any statutory obligation under the Income-tax Act, 1961, or Income-tax Rules, 1962, to collect evidence to show that the employee had actually utilized the amount towards leave travel concession. There is no such circular of the CBDT requiring the employer to collect and examine the evidence supporting the declaration submitted by the employees for the purpose of tax deduction under section 192.

Thus, the action of the Assessing Officer is not tenable in law.

Question 10

Explain the applicability of the provision relating to the deduction of tax at source in the following transactions:

- (i) *Max Limited pays ₹ 1 lac to Mini Limited, a resident contractor who, under the contract dated 15th October, 2012, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited.*
- (ii) *A company operating a television channel makes payment of ₹ 5 lacs to a former cricketer for making running commentary of a one-day cricket match.*

- (iii) *EL Ltd., a foreign company, pays outside India, salary to its employee, Mr. Raghavan, a foreign national and a non-resident, for services rendered in India.*

Answer

- (i) The definition of "work" under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of "work" under section 194C. Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.
- (ii) Provisions for deduction of tax at source under section 194J are attracted in respect of payment of fees for professional services, if the amount of such fees exceeds ₹ 30,000 in the relevant financial year. The service rendered by a commentator in relation to sports activities has been notified by the CBDT as professional service for the purpose of section 194J vide its *Notification No. 88 dated 21st August, 2008*. Therefore, tax is required to be deducted @10% from the fee of ₹ 5 lacs payable to the former cricketer.
- (iii) Section 195 requires deduction of tax at source by any person responsible for making payment to a non-resident, any interest or any other sum chargeable under the provisions of the Income-tax Act, 1961 (other than income chargeable under the head "Salaries").

Section 192(1) requires "any person" responsible for paying income under the head "Salaries" to deduct tax at source. Therefore, even if the payer is a foreign company, section 192 would be applicable.

TDS provisions under section 192 are attracted, if the salary payable to a non-resident is chargeable to tax in India. Under section 9(1)(ii), income which falls under the head "Salaries" shall be deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India shall be regarded as income earned in India. Therefore, salary paid to Mr. Raghavan, a non-resident, attracts tax liability in India, as he has rendered services in India and the salary is attributable to such services.

Therefore, the foreign company, EL Limited, is liable to deduct tax at source under section 192 from the salary of Mr. Raghavan.

Question 11

Bharathi Cements Ltd., the assessee, purchases jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. From 01.09.2012 to 20.03.2013, the value of jute bags supplied is ₹ 8,00,000, for which the invoice has been raised on 20.03.2013. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 60,000. You are informed that the assessee has not sold any material to Raj Kumar & Co.

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and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

Answer

As per the definition under section 194C "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, i.e. such a contract would be in the nature of contract for 'sale'.

The problem clearly states that Raj Kumar & Co. have to manufacture the jute bags using raw materials purchased from outsiders and that the assessee has not sold any material to them. Therefore, in this case, it is a contract for sale. Hence, the provisions of section 194C would not be attracted and no liability to deduct tax at source would arise.

Question 12

Mahanadi Limited has taken a 3,000 sq. ft. flat on rent from Yamuna Limited to set up its Branch Office. The rent payable to Yamuna Limited for the flat is ₹ 60,000 per month plus applicable service tax. Mahanadi Limited wishes to know whether tax is required to be deducted at source under section 194-I from gross amount of rent including service tax. Give your advice.

Answer

CBDT Circular No.4/2008 dated 28.04.2008 has clarified that service tax paid by the tenant does not partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.

Question 13

Examine critically in the context of provisions contained in Income-tax Act, 1961 as to the correctness of the action or the treatment given in each of the following cases:

M/s Soft Drinks Limited entered into an agreement for the warehousing of its products with XYZ Warehousing and deducted tax at source as per provisions of section 194C out of warehousing charges paid during the year ended on 31.03.2012. The Assessing Officer, while completing the assessment for A.Y. 2012-13 of Soft Drinks Limited in March 2013, treated the warehousing charges as rent as defined in section 194-I and asked the company to make payment of difference amount of TDS with interest. It was submitted by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS cannot be recovered. However, it will make the payment of due interest on the difference amount of TDS.

Answer

Section 201 has been amended by the Finance Act, 2012 w.e.f. 1.7.2012, to provide that the payer (including the principal officer of the company) who fails to deduct the whole or any part

of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee –

- (1) has furnished his return of income under section 139;
- (2) has taken into account such sum for computing income in such return of income; **and**
- (3) has paid the tax due on the income declared by him in such return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.

However, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Therefore, M/s Soft Drinks Limited shall not be required to pay the difference tax in case the above mentioned conditions are fulfilled. However, the assessee shall be liable to make payment of interest from the date on which such tax was deductible to the date of furnishing of return of income by XYZ Warehousing.

Question 14

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lacs annually. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

Answer

Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds ₹ 30,000 in a financial year. As per *Explanation (a)* to section 194J, professional services includes, inter alia, services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purpose of section 194J.

Accordingly, the CBDT has, vide *Notification No.88 dated 21.8.2008*, in exercise of the powers conferred by clause (a) of the *Explanation* to section 194J notified the services rendered by, inter alia, coaches and trainers in relation to the sports activities as professional services for the purpose of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

Question 15

ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2012 on a rent of ₹ 20,000 per month. It also took on hire machinery from J with effect from 1.10.2012 on hire

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charges of ₹ 15,000 per month. ABC Ltd. entered into two separate agreements with J for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2012-13 amounting to ₹ 1,40,000 and ₹ 90,000, respectively, were credited by ABC Ltd. to the account of J in its books of account on 31.3.2013. Examine the obligation of ABC Ltd with regard to deduction of tax at source in respect of the rent and hire charges.

Answer

As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of, *inter alia*, building and machinery, irrespective of whether such assets are owned or not by the payee. The limit of ₹ 1,80,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and the other for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 1,80,000. Therefore, ABC Ltd. has to deduct tax at source under section 194-I in respect of the rent and hire charges aggregating to ₹ 2,30,000 (₹ 1,40,000 + ₹ 90,000) credited to the account of J, the payee.

Question 16

M, an individual, had let out his building on a monthly rent of ₹ 20,000. The tenant deducted tax under section 194-I from the rent paid to M, but did not remit such tax to the credit of the Central Government. M filed his return of income for the assessment year 2013-14 including therein the rental income from the said building and paid the balance tax on his total income after taking credit for tax deducted at source by the tenant. The Assessing Officer has called upon M to pay the tax to the extent of tax deducted at source. Is the Assessing Officer justified in doing so?

Answer

Section 205 of the Income-tax Act, 1961 provides that where tax is deductible at source under the provisions of Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. Section 205, therefore, bars a direct demand being made on an assessee to the extent of tax deducted from the income. The Income-tax Department can recover the tax deducted at source from the tenant and not from M in view of the clear mandate in section 205. The Karnataka High Court has in *Smt. Anusuya Alva v. DCIT (2005) 278 ITR 206* ruled that tax deducted at source by the tenant from the rent paid but not remitted to the credit of the Central Government can be recovered only from the tenant and not from the landlord. Therefore, in view of the clear mandate in section 205, the Assessing Officer is not justified in law in calling upon M to pay the said tax.

Question 17

Examine the obligation of the person responsible for paying the income to deduct tax at source and indicate the due date for payment of such tax, wherever applicable, in respect of the following items:

- (i) MNO Ltd., the employer, credited salary due for the financial year 2012-13 amounting to ₹ 2,40,000 to the account of Q, an employee, in its books of account on 31.3.2013. Q has not furnished any information about his income/loss from any other head or proof of investments/payments qualifying for deduction under section 80C.
- (ii) T, an individual whose total sales in business during the year ending 31.3.2012 was ₹ 1.20 crores, paid ₹ 9 lacs by cheque on 1.1.2013 to a contractor (an individual), for construction of his business premises, in full and final settlement. No amount was credited earlier to the account of the contractor in the books of T.
- (iii) BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2012. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2012.

Answer

- (i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.
- (ii) An individual who is liable for tax audit under section 44AB in the immediately preceding financial year is liable to deduct tax at source under section 194C for the financial year 2012-13 in respect of the payment made to contractor exceeding ₹ 30,000 in a single payment and ₹ 75,000 in aggregate during the financial year. Turnover of the individual T exceeded ₹ 60 lacs in the financial year 2011-12. Therefore, T is liable to get his accounts for that year audited under section 44AB. As the payment during financial year 2012-13 to the contractor had exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

- (iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J has been separately fixed for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd., is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

Question 18

Alap Ltd. has made payments on various dates in financial year 2012-13 to Vilambit Ltd. towards work done under different contracts as follows :

Contract Number	Date of payment	Amount (₹)
1.	5.5.2012	10,000
2.	6.6.2012	15,000

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3.	8.8.2012	25,000
4.	10.12.2012	20,000
5.	29.03.2013	10,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is ₹ 1,000 only and there is no other contract during the year.

Answer

As per section 194C(5) tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 75,000 in aggregate during a financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount of the sums paid exceeds ₹ 75,000. Therefore, Alap Ltd's contention is not correct and tax is required to be deducted at source on the whole amount of ₹ 80,000 from the last payment of ₹ 10,000 towards contract no.5 on account of which the aggregate payment exceeded ₹ 75,000.

No tax deduction is to be made if the value of the last contract is ₹ 1,000 as the aggregate amount in such case would only be ₹ 71,000, which is below the aggregate monetary limit of ₹ 75,000.

Question 19

Discuss the liability for tax deduction at source in the following cases for the assessment year 2013-2014 :

- (i) *Mr. Anand has been running a sole proprietary business whose accounts are audited under section 44AB of Income-tax Act, 1961. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of ₹ 10,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.*
- (ii) *By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of ₹ 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.*
- (iii) *An Indian company pays gross salary including allowances and monetary perquisites amounting to ₹ 6,80,000 to its General Manager. Besides, the company provides non-monetary perquisites to him in the same period whose value is estimated at ₹ 1,20,000.*

Answer

- (i) Where the payer is an individual or HUF whose accounts are required to be audited as per the provisions of section 44AB for the immediately preceding financial year, he has to

deduct tax at source. If the accounts of Mr. Anand are subject to tax audit for the assessment year 2012-13 under section 44AB of the Income-tax Act, 1961, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2012-13.

Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of ₹15,000 p.m., service charge of ₹ 10,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments to Mr. R during the financial year 2012-13 exceeds ₹ 1,80,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.

- (ii) The definition of "work" under *Explanation* to section 194-C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation under 194-C. If the catering organization is an individual or HUF, then the tax deduction shall be @ 1%.

(iii)	₹
Gross salary, allowances and monetary perquisites	6,80,000
Non-Monetary perquisites	<u>1,20,000</u>
	<u>8,00,000</u>
Tax Liability	92,700
Average rate of tax ($\text{₹ } 92,700 / \text{₹ } 8,00,000 \times 100$)	11.5875%

The company can deduct ₹ 92,700 at source from the salary of the General Manager. Alternatively, the company can pay tax on non-monetary perquisites as under –

Tax on non-monetary perquisites = 11.5875% of ₹ 1,20,000 = ₹ 13,905

Balance to be deducted from salary = ₹ 78,795

If the company pays tax of ₹ 13,905 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a). It is not chargeable to tax in the hands of the employee under section 10(10CC).

Question 20

The following issues arise in connection with the deduction of tax at source under Chapter XVII-B. Discuss the liability for tax deduction in these cases:

- (a) *An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.*

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- (b) A T.V. channel pays ₹ 10 lacs on 1.9.2012 as prize money to the winner of a quiz programme, "Who will be a Millionaire"?
- (c) State Bank of India pays ₹ 50,000 per month as rent to the Central Government for a building in which one of its branches is situated.
- (d) A television company pays ₹ 80,000 to a cameraman for shooting of a documentary film.
- (e) A State Government pays ₹ 20,000 as commission to one of its agent on sale of lottery tickets.
- (f) A Turf Club awards a jack-pot of ₹ 5 lacs to the winner of one of its races.

Answer

- (a) As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head salaries. However, under sub-section (2A) of that section, the employee will be entitled to relief under section 89(1) and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form. The person responsible for making the payment shall compute the relief and take into account the same while making deduction of tax at source from salary.
- (b) Under section 194B, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding ₹ 10,000 shall at the time of payment deduct income-tax at 30%.
- (c) Section 194-I, which governs the deductions of tax at source on payment of rent, exceeding ₹ 1,80,000 per annum is applicable to all taxable entities excepting individuals and HUFs. However, under section 196, exemption is provided in respect of payments made to Government from application of provisions of tax deduction at source.
- (d) If the cameraman is an employee of the T.V. Company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194-J will apply. Tax at 10% will have to be deducted at the time of credit of ₹ 80,000 or on its payment, whichever is earlier.
- (e) Under section 194G, the person responsible for paying to any person stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than ₹ 1,000, deduct income-tax at 10%.
- (f) The payment by way of winnings from horse race is governed by section 194BB. Under this section, the person responsible for payment shall, at the time of payment deduct tax at source @ 30%, if the payment exceeds ₹ 5,000.

Question 21

Discuss the following proposition: Interest levied under section 220 of the Act can be waived.

Answer

Under section 220(2A), the Chief Commissioner or the Commissioner, may reduce or waive the amount of interest paid or payable by an assessee, if he is satisfied that:

- (i) Payment of such interest has caused or would cause undue hardship to the assessee;
- (ii) Default in the payment of the amount on which interest has been charged was due to circumstances beyond the control of the assessee and
- (iii) The assessee has cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

Question 22

How do you deal with the following issues under the respective provisions of the Income-tax Act, 1961?

- (a) *A foreign company, which has a branch operating in India pays salary to its employees "net of tax". It declines to issue certificate under section 203 to its employees of the tax deducted at source on the ground that it had not deducted any tax at source.*
- (b) *A foreign company pays fee for professional and technical services rendered to it by an Indian law and accountancy firm. The foreign company does not have any branch, agent or establishment in India. Advise the foreign company as to, how it could comply with provisions of section 194J.*

Answer

- (a) This position was considered by the Board and *Circular No. 785 dated 24-11-1988* was issued on this point.

"Payments net of tax" has been contemplated under section 195A.

In cases where the amount is paid, "net of tax", then, for the purpose of deduction of tax at source, such income should be increased by such an amount as would, after deduction of tax thereon, be equal to the net amount payable. In all such cases, where the amount is agreed to be paid "net of tax", the payer is under legal obligation to furnish a certificate for the tax deducted at source in the prescribed form to the payee within the time prescribed under section 203. The foreign company is under a legal obligation to pay the tax on behalf of its employees and also issue the certificate to its employees under section 203.

- (b) In its *Circular No.726 dated 18.10.1995*, the Board considered such a situation and having regard to the practical difficulties involved, decided that any fees paid through regular banking channels to any chartered accountant, lawyer, advocate or solicitor who is resident in India by the non-residents who do not have any agent or business connection or permanent establishment in India may not be subject to the provisions of tax deduction at source under section 194J of the Income-tax Act, 1961.

Question 23

You are consulted on the justifiability of the following claims. Your advice is to be framed based on the provisions of the Income-tax Act, 1961.

- (i) *Mr. Govind won the first prize in a lottery ticket and the prize money was a Maruti car worth ₹ 2 lacs. According to section 194B, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?*
- (ii) *A private trust has two individuals and one HUF as beneficiaries and their shares were equal. The trust borrowed certain amounts on which interest payable to a single lender was ₹ 15,000. Is the trust obliged to deduct tax at source at the time of payment/credit of such interest to the lender?*

Answer

- (i) This position is covered by the proviso to section 194B. It is provided therein that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, the person responsible shall, before releasing the winnings, ensure that the tax has been paid in respect of the winnings. Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. ₹ 60,000 being @ 30% of ₹ 2 lacs) must be collected from Mr. Govind by the agent and remitted to the Government account before releasing the Maruti car to him.
- (ii) Under section 194A, any person, not being an individual or a Hindu undivided family who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities shall at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rates in force. In this case, the beneficiaries as well as their shares are known. The trust can be assessed in the same manner and to the same extent as the beneficiaries and therefore, the trust will have the same status as that of the beneficiaries i.e. individuals or HUF as the case may be. Since interest paid or credited to an individual or HUF is not covered by section 194A, no tax needs to be deducted at source. However, in case the accounts of the trust are required to be audited as per the provisions of section 44AB, then it is liable to deduct tax at source @10%.

Self-examination Questions

1. Discuss the provisions of section 194LA relating to TDS from compensation paid on acquisition of immovable property other than agricultural land.
2. Explain the terms “buyer”, “scrap” and “seller” as defined under *Explanation* to section 206C of the Income-tax Act, 1961.

3. What are the prescribed modes of recovery of tax by the Tax Recovery Officer under the provisions of the Income-tax Act?
4. Discuss the employer's liability to deduct tax at source from the salary paid to a non-resident employee and the consequences, if any, for failure to deduct tax at source.
5. ABC Ltd. failed to deduct tax at source under section 194J in respect of fees for professional services paid by it. The Assessing Officer levied penalty under section 271C for failure to deduct tax at source. In addition, the Assessing Officer also levied penalty under section 272A(2)(c) for failure to furnish return under section 206 and under section 272A(2)(g) for failure to furnish certificate of tax deducted at source as per the requirement of section 203. Is the action of the Assessing Officer correct in law?
6. Section 206C casts responsibility on the seller to collect tax at source, *inter alia*, on sale of alcoholic liquor for human consumption at the rate of 1% of "such amount" received from the buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier. Whether collection of tax at source under section 206C would be on the price of liquor, including excise duty paid for purchase of liquor? You are required to answer this question with the aid of a case law.
7. Can stamp vendors be treated as agents of the Government for marketing stamp papers? If yes, can tax be deducted under section 194H in respect of discount given on sale of stamps by the Treasury to the stamp vendor?

Answers

5. This issue came up before the High Court of Allahabad in *CIT-II, Lucknow vs. Sahara Airlines Ltd.* The High Court held that the provisions of sections 203 and 206 would be applicable only if tax has been deducted at source by the person concerned and he commits default in complying with any of the provisions of section 203 or 206. However, in a case where no tax has been deducted at source, the aforesaid provisions would not be attracted. For failure of the assessee in deducting tax at source, penalty can be imposed upon him under section 271C. Once a person concerned has been subjected to a penalty under section 271C for not deducting tax at source, there would not arise any occasion for levying penalty under section 272A(2)(c) and 272A(2)(g) for non-compliance of the provisions of sections 206 and 203. In other words, in case the tax has not been deducted at source, the question of issuing the certificate of tax deducted under section 203 and that of filing of return under section 206 would not arise at all. Therefore, the question of imposing penalty for violation of the provisions of section 203 and 206 would also not arise.

Therefore, the action of the Assessing Officer imposing penalty under sections 272A(2)(c) and 272A(2)(g) in a case where tax has not been deducted at source is not correct in law.

6. This issue was answered by the High Court of Madhya Pradesh in *Vinod Rathore vs. Union of India (2005) 278 ITR 122*. The question for consideration before the Court was

whether collection of tax at source under section 206C on the price of liquor shall include excise duty paid for purchase of liquor. The High Court held that the purchase price would include the excise duty paid by the buyer and collection of tax at source under section 206C on the price of liquor shall include excise duty paid for purchase of liquor.

7. In *Kerala State Stamp Vendors Association v. Office of the Accountant-General (2006) 282 ITR 07*, the High Court held that stamp vendors cannot be treated as agents of the Government for marketing stamp papers. The discount given on sale of stamps by the Treasury to the stamp vendor is outside the scope of TDS provisions under section 194H.

The High Court observed that only commission and brokerage are subject to tax deduction under section 194H. Commission or brokerage is paid for services rendered in the course of sale. This implies services rendered by third parties like brokers or agents. It cannot mean services rendered by a buyer because a buyer is not rendering any service except buying. A price discount given by the seller to the buyer cannot be treated as commission or brokerage for services rendered in the course of buying and selling of goods. This is because the act of buying does not constitute rendering of any service. Therefore, stamp vendors cannot be treated as agents of the Government for marketing stamp papers and consequently, TDS provisions under section 194H are not attracted.