

S. 40(a)(ia) Disallowance for Non Deduction and Short Deduction of TDS from A.Y. 2015-16 Applicable for CA IPCC and FINAL MAY 2015 EXAM and It is practically useful For CA's

Extract of Revised Section 40(a)(ia) of the Income Tax Act, 1961 amended vide Finance Act, 2014 as applicable in relation to assessment year 2015-16 and subsequent years-

Section 40(a)(ia) *[any interest, commission or brokerage, [rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work)], on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [has not been paid on or before the due date specified in sub-section (1) of section 139 :]*

[Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, *[thirty per cent of]* such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :]

[Provided further that where an assessee fails to deduct **the whole or any part of the tax** in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.]

Disallowance for non-deduction or non-payment of TDS:

Under section 40(a)(ia) of the Act, in case of payments made to resident, the deductor is allowed to claim deduction for payments as expenditure in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return of income under section 139(1) of the Act.

In case of non-deduction or non-payment of tax deducted at source (TDS) from certain payments made to residents, the entire amount of expenditure on which tax was deductible is disallowed under section 40(a)(ia) for the purposes of computing income under the head "Profits and gains of business or profession". The disallowance of whole of the amount of expenditure results into undue hardship.

In order to reduce the hardship, non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia) of the Act, the **disallowance shall be restricted to 30% of the amount of expenditure on which TDS is not deducted.**

Earlier, 100% of such amount is disallowed.

Earlier, the non-deduction or non-payment of TDS on payments made to residents results in disallowance only with respect to certain specified categories of payments (viz. interest, commission, brokerage, rent, royalty, fee for technical services or fee for professional services).

NOW section 40(a)(ia) of the I-T Act to increase the scope of disallowance to **every category** of payment made to a resident on which tax is required to be deducted at source **under Chapter XVII-B** of the I-T Act.

Controversy:-

What amount to be disallowed us 40(a)(ia) on non deduction or short deduction?

Views:-

- 1) 30% of whole amount.
- 2) 30% of amount which TDS not deducted or short deducted (Proportional basis).
- 3) disallowance under section 40(a)(ia) is only for non deduction of tax at source and not short-deduction of tax.

Analysis of views

- 1) First view is illogical as if person have deducted and paid tax on maximum amount but he didn't deducted and paid on minor amount.
- 2) Second view is True and fair view as 30% disallowance to be made on proportionally .
- 3) Third view is illogical because section 40(a)(ia) says that fails to deduct **the whole or any part of the tax**.

Let us understand it with some Examples:-

1) Tax to be deducted us 194J @10% is Rs 10,000/- on Rs 1,00,000/- and no deducted and paid. What will be amount of disallowance?

Answer:- No tax deducted and paid on Rs 1,00,000.

So Amount of disallowance will be Rs 30,000/- (30% of Rs 1,00,000/-) and if it is paid after due date then Rs 30,000/- will be allowed as deduction in next previous year in which tax will be paid.

2) Tax to be deducted us 194J @10% is Rs 10,000/- on Rs 1,00,000/- and actually deducted and paid Rs 1,000/-. What will be amount of disallowance?

Answer:- Tax deducted and paid is Rs 1,000/- means on Rs 10,000/- tax is deducted and on Rs 90,000/- tax is not deducted.

So Amount of disallowance will be Rs 27,000/- (30% of Rs 90,000/-) and if it is paid after due date then Rs 27,000/- will be allowed as deduction in next previous year in which tax will be paid.

This is solved based on second view discussed above and if we take first view then disallowance will be Rs 30,000 which will be incorrect. To prove that first view is incorrect, let discuss example no 3.

3) Tax to be deducted us 194J @10% is Rs 10,000/- on Rs 1,00,000/- and actually deducted and paid Rs 9,000/-. What will be amount of disallowance?

Answer:- Tax deducted and paid is Rs 9,000/- means on Rs 90,000/- tax is deducted and on Rs 10,000/- tax is not deducted.

So Amount of disallowance will be Rs 3,000/- (30% of Rs 10,000/-) and if it is paid after due date then Rs 3,000/- will be allowed as deduction in next previous year in which tax will be paid.

This is solved based on second view discussed above and if we take first view then disallowance will be Rs 30,000 which will be incorrect. Hence with this example it is proved that first view is incorrect.

Final Conclusion is that in case of non deduction and short deduction amount disallowed us 40(a)(ia) will be 30% of amount which TDS not deducted or short deducted (Proportional basis).

Thanks and Regards

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