After studying this chapter, you would be able to -

- **examine** the provisions relating to deduction and collection of tax at source to determine whether tax needs to be deducted/collected at source.

- **compute** the amount of tax to be deducted/collected at source.

- **analyse and apply** the provisions relating to deduction and collection of tax at source to address related issues.

- **examine** the provisions relating to advance tax obligations, the installments and due dates, and interest and penal consequences of non-payment or delayed payment of advance tax; **analyse and apply** such provisions to determine the quantum of advance tax payment and interest liability, if any, and address related issues.

- **examine** the provisions relating to chargeability of interest for defaults in furnishing return of income, for non-payment of advance tax and deferral of advance tax; **analyse and apply** such provisions to compute interest and address related issues.

- **analyse and apply** the provisions relating to refunds to compute the refund due and address related issues.
15.1 DEDUCTION AT SOURCE AND ADVANCE PAYMENT [SECTION 190]

The total income of an assessee for the previous year is taxable in the relevant assessment year. For example, the total income for the P.Y.2017-18 is taxable in the A.Y.2018-19. However, the income-tax is recovered from the assessee in the previous year itself through –

1. Tax deduction at source (TDS)
2. Tax collection at source (TCS)
3. Payment of advance tax

Another mode of recovery of tax is from the employer through tax paid by him under section 192(1A) on the non-monetary perquisites provided to the employee.

These taxes are deductible from the total tax due from the assessee. The assessee, while filing his return of income, has to pay self-assessment tax under section 140A, if tax is due on the total income as per his return of income after adjusting, *inter alia*, TDS and advance tax.

15.2 DIRECT PAYMENT [SECTION 191]

Section 191 provides that in the following cases, tax is payable by the assessee directly –

1. in the case of income in respect of which tax is not required to be deducted at source; and
2. income in respect of which tax is liable to be deducted but is not actually deducted.

In view of these provisions of section 191, the proceedings for recovery of tax necessarily had to be taken against the assessee whose tax was liable to be deducted, but not deducted.

In order to overcome this difficulty, the *Explanation* to this section provides that if any person, including the principal officer of the company,—

1. who is required to deduct tax at source; or
2. being an employer paying tax on non-monetary perquisites under section 192(1A),

does not deduct the whole or part of the tax, or after deducting fails to pay such tax deducted, then such person shall be deemed to be an assessee in default.

However, if the assessee himself has paid the tax, this provision will not apply.
15.3 DEDUCTION OF TAX AT SOURCE

15.3.1 Salary [Section 192]

(1) **Applicability of TDS under section 192**

This section casts an obligation on every person responsible for paying any income chargeable to tax under the head ‘Salaries’ to deduct income-tax on the amount payable.

(2) **Manner of deduction of tax**

(i) Such income-tax has to be calculated at the average rate of income-tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the estimated total income of the assessee. Therefore, the liability to deduct tax at source in the case of salaries arises only at the time of payment.

(ii) Average rate of income-tax means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.

(iii) The concept of payment of tax on non-monetary perquisites has been provided in sections 192(1A) and (1B). These sections provide that the employer may pay this tax, at his option, in lieu of deduction of tax at source from salary payable to the employee. Such tax will have to be worked out at the average rate applicable to aggregate salary income of the employee and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc.

(iv) In cases where an assessee is simultaneously employed under more than one employer or the assessee takes up a job with another employer during the financial year after his resignation or retirement from the services of the former employer, he may furnish the details of the income under the head “Salaries” due or received by him from the other employer, the tax deducted therefrom and such other particulars to his current employer. Thereupon, the subsequent employer should take such information into consideration and then deduct the tax remaining payable in respect of the employee’s remuneration from both the employers put together for the relevant financial year.

(v) For purposes of deduction of tax out of salaries payable in a foreign currency, the value of salaries in terms of rupees should be calculated at the prescribed rate of exchange as specified in Rule 26 of the Income-tax Rules, 1962.

(vi) In respect of salary payments to employees of Government or to employees of companies, co-operative societies, local authorities, universities, institutions, associations or bodies, deduction of tax at source should be made after allowing relief under section 89(1), where eligible.
(vii) A tax payer having salary income in addition to other income chargeable to tax for that financial year, may send to the employer, the following:

(a) particulars of such other income;
(b) particulars of any tax deducted under any other provision;
(c) loss, if any, under the head ‘Income from house property’.

The employer shall take the above particulars into account while calculating tax deductible at source.

(viii) It is also provided that except in cases where loss from house property has been adjusted against salary income, the tax deductible from salary should not be reduced as a consequence of making the above adjustments.

(3) **Furnishing of statement of particulars of perquisites or profits in lieu of salary by employer to employee**

Sub-section (2C) provides that the employer shall furnish to the employee, a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof. The statement shall be in the prescribed form and manner. This requirement is applicable only where the salary paid/payable to an employee exceeds ₹1,50,000. For other employees, the particulars of perquisites/profits in lieu of salary shall be given in Form 16 itself.

(4) **Circular issued by CBDT**

Every year, the CBDT issues a circular giving details and direction to all employers for the purpose of deduction of tax from salaries payable to the employees during the relevant financial year. These instructions should be followed.

(5) **Requirement to obtain evidence/ proof/ particulars of claims from the employee by the employer**

Sub-section (2D) casts responsibility on the person responsible for paying any income chargeable under the head “Salaries” to obtain from the assessee, the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner, for the purposes of –

(1) estimating income of the assessee; or
(2) computing tax deductible under section 192(1).

Rule 26C has been inserted in the Income-tax Rules, 1962, with effect from 1st June, 2016, to require furnishing of evidence of the following claims by an employee to the person responsible for making payment under section 192(1) in Form No.12BB for the purpose of estimating his income or computing the tax deduction of tax at source:
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature of Claim</th>
<th>Evidence or particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>House Rent Allowance</td>
<td>Name, address and PAN of the landlord(s) where the aggregate rent paid during the previous year exceeds ₹ 1 lakh.</td>
</tr>
<tr>
<td>2.</td>
<td>Leave Travel Concession or Assistance</td>
<td>Evidence of expenditure</td>
</tr>
<tr>
<td>3.</td>
<td>Deduction of interest under the head &quot;Income from house property&quot;</td>
<td>Name, address and PAN of the lender</td>
</tr>
<tr>
<td>4.</td>
<td>Deduction under Chapter VI-A</td>
<td>Evidence of investment or expenditure.</td>
</tr>
</tbody>
</table>

Section 192(1) requires any person responsible for paying any income chargeable under the head “Salaries” to deduct tax at source at the time of payment. If an employee receives income chargeable under a head other than “Salaries”, section 192 does not get attracted at all.

In the case of ITC Ltd v. CIT (2016) 384 ITR 14, the issue under consideration before the Supreme Court was whether “tips” received by the hotel-company from its customers and distributed to the employees fell within the meaning of “Salaries” to attract tax deduction at source under section 192.

The Supreme Court observed that in respect of tips collected by the company from the customers and distributed to the employees, the person responsible for paying the employee was not the employer at all, but a third person, namely the customer. As income from tips would be chargeable in the hands of the employees as “Income from Other Sources”, on account of such tips being received from customers and not from the employer, section 192 would not get attracted at all.

The Supreme Court further observed that there was no vested right in the employee to claim any amount of tip from his employer. Tips are purely voluntary amounts that may or may not be paid by customers for services rendered to them, and hence, would not fall within the meaning and scope of section 15. Further, the amount of tips collected from the customers by the employer and paid to the employees has no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee. Due to this reason the tips received by the employees could not be regarded as profits in lieu of salary in terms of section 17(3). The payments of collected tips included and paid by way of a credit card by a customer, would not be payments made “by or on behalf of” an employer. The contract of employment not being the proximate cause for the receipt of tips by the employee from a customer, such payments would be outside the scope of sections 15 and 17.
Illustration 1

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 an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing leave travel facility. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

Solution

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 said concession / facility would be eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962.

Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head ‘Salaries’ to obtain from the assessee, the evidence or proof or particulars of prescribed claims under the provisions of the Act in the prescribed form and manner for the purposes of –

1. estimating income of the assessee; or
2. computing tax deductible under section 192(1).

Rule 26C of the Income-tax Rules, 1962 mandates a salaried assessee claiming, inter alia, leave travel concession or assistance to furnish evidence of expenditure incurred in relation thereto to the person responsible for making such payment under section 192(1), for the purpose of estimating his income for computing the tax deductible under section 192.

Thus, the action of the Assessing Officer is correct in law.

15.3.2 Premature withdrawal from employees provident fund [Section 192A]

1. Compliance with Rule 9 of Part A of the Fourth Schedule: Certain Concerns

(i) Under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund (PF) scheme subject to fulfillment of certain conditions.

(ii) The provident funds established under a scheme framed under EPF & MP Act, 1952 or Provident Fund exempted under section 17 of the said Act and recognised under the Income-tax Act, 1961 are termed as Recognised Provident fund (RPF) under the Act.
(iii) Part A of the Fourth Schedule to the Income-tax Act, 1961 contains the provisions relating to RPFs. Under the existing provisions of Rule 8 of Part A of the Fourth Schedule, the withdrawal of accumulated balance by an employee from the RPF is exempt from taxation.

(iv) For the purpose of discouraging pre-mature withdrawal and promoting long term savings, if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) and does not opt for transfer of accumulated balance to new employer, the withdrawal would be subject to tax.

(v) Rule 9 of Part A of the Fourth Schedule provides the manner of computing the tax liability of the employee in respect of such pre-mature withdrawal. In order to ensure collection of tax in respect of such pre-mature withdrawals, Rule 10 of Part A of the Fourth Schedule casts responsibility on the trustees of the RPF to deduct tax as computed in Rule 9 at the time of payment.

(vi) Rule 9 provides that the tax on withdrawn amount is required to be calculated by recomputing the tax liability of the years for which the contribution to RPF has been made by treating the same as contribution to unrecognized provident fund. The trustees of private provident fund schemes, are generally a part of the employer group and hence, have access to or can easily obtain the information regarding taxability of the employee making pre-mature withdrawal for the purposes of computation of the amount of tax liability under Rule 9. However, it may not always be possible for the trustees of EPFS to get the information regarding taxability of the employee such as year-wise amount of taxable income and tax payable for the purposes of computation of the amount of tax liability under Rule 9.

(2) **Applicability and Rate of TDS**

Section 192A provides for deduction of tax @10% on premature taxable withdrawal from employees provident fund scheme. Accordingly, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10%.

(3) **Time of tax deduction at source**

Tax should be deducted at the time of payment of accumulated balance due to the employee.
(4) **Non-applicability of TDS under section 192A**

No tax deduction is to be made this section if the amount of such payment or aggregate amount of such payment to the payee is less than ₹ 50,000.

(5) **Deduction at maximum marginal rate in case of non-submission of PAN**

Any person entitled to receive any amount on which tax is deductible under this section has to furnish his PAN to the person responsible for deducting such tax. In case he fails to do so, tax would be deductible at the maximum marginal rate.

**Illustration 2**

Mr. Sharma, an employee of M/s. ABC Ltd. since 10-04-2014 resigned on 31-03-2018 and withdrew ₹ 60,000 being the balance in his EPF account. State with reasons whether the provisions of Chapter XVII-B are attracted and if so, what is the net amount receivable by the payee, Mr. Sharma?

**Solution**

As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment of accumulated balance due to the employee. Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is ₹ 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, inter alia, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.

In the present case, Mr. Sharma has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of four years with M/s. ABC Ltd. Therefore, tax has to be deducted at source@10% under section 192A on ₹ 60,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. ABC Ltd.

The net amount receivable by Mr. Sharma is ₹ 54,000 [i.e., ₹ 60,000 – ₹ 6,000, being tax deducted at source].

**Note** – It is assumed that Mr. Sharma has furnished his permanent account number (PAN) to the person responsible for deducting tax at source. Otherwise, tax would be deductible at the maximum marginal rate. It may be noted that with effect from 1.6.2015 such employee can furnish declaration in Form No.15G for non-deduction of tax at source under section 192A by virtue of section 197A(1A).
15.3.3 Interest on securities [Section 193]

(1) **Person responsible for deduction of tax at source**

This section casts responsibility on every person responsible for paying to a resident any income by way of interest on securities.

(2) **Rate of TDS**

Such person is vested with the responsibility to deduct income-tax at the rates in force from the amount of interest payable.

The rate at which tax is deductible under section 193 is 10%, both in the case of domestic companies and resident non-corporate assessees.

(3) **Time of tax deduction at source**

Tax should be deducted at the time of credit of such income 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.

Where any income by way of interest on securities is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

(4) **Non-applicability of TDS under section 193**

No tax deduction is to be made from any interest payable:

(i) on 4¼% National Defence Bonds 1972, where the bonds are held by an individual not being a non-resident;

(ii) on 4¼% National Defence Loan, 1968 or 4¾% National Defence Loan, 1972, where the interest is payable to an individual;

(iii) on National Development Bonds;

(iv) on 7-year National Savings Certificates (IV Issue);

(v) on debentures issued by any institution or authority or any public sector company or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as notified by the Central Government;

(vi) on 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980, where the bonds are held by an individual (other than a non-resident), provided that the holders of the bonds make a written declaration that the total nominal value of the bonds held by him or on his behalf
did not in either case exceed Rs. 10,000 at any time during the period to which the interest relates;

(vii) on any security of the Central Government or a State Government;

Note – It may be noted that tax has to be deducted at source in respect of interest payable on 8% Savings (Taxable) Bonds, 2003, only if such interest payable exceeds Rs. 10,000 during the financial year.

(viii) on any debentures (whether listed or not listed on a recognized stock exchange) issued by the company in which the public are substantially interested to a resident individual or HUF. However,

(a) the interest should be paid by the company by an account payee cheque;
(b) the amount of such interest or the aggregate thereof paid or likely to be paid during the financial year by the company to such resident individual or HUF should not exceed Rs. 5,000.

(ix) on securities to LIC, GIC, subsidiaries of GIC or any other insurer, provided –

(a) the securities are owned by them or
(b) they have full beneficial interest in such securities.

(x) on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.

15.3.4 Dividends [Section 194]

(1) Applicability of TDS under section 194

Dividends declared, distributed or paid by a domestic company attracts dividend distribution tax in the hands of the company. Such dividend includes deemed dividend under sections 2(22)(a) to (d). Hence, no tax is deductible at source in respect of such dividend.

Accordingly, TDS provisions under this section are attracted only in respect of deemed dividend referred to in section 2(22)(e) to a shareholder who is resident in India, if such dividend exceeds Rs. 2,500 in a year.

(2) Rate of TDS

The rate of deduction of tax in respect of such dividend is 10%.

(3) Non-applicability of TDS under section 194

Individual shareholders, who are residents in India are entitled to receive their dividends from any domestic company without deduction of tax at source by the company in cases where -
(i) of dividend income received from the company does not exceed ₹ 2,500 during the year; and

(ii) the dividend is paid by an account payee cheque.

The TDS provisions will not apply to dividend receivable by LIC, GIC, its subsidiaries or any other insurer provided the shares are owned by them, or they have full beneficial interest in such shares.

15.3.5 Interest other than interest on securities [Section 194A]

This section deals with the scheme of deduction of tax at source from interest other than interest on securities. The main provisions are the following:

(1) **Applicability of TDS under section 194A**

This section applies only to interest, other than “interest on securities”, credited or paid by assessee other than individuals or Hindu undivided families whose total sales, gross receipts or turnover from the business or profession carried on by him do not exceed the monetary limits of ₹ 1 crore and ₹ 50 lakhs, respectively, under section 44AB during the immediately preceding financial year.

These provisions apply only to interest paid or credited to residents.

(2) **Time of tax deduction at source**

The deduction of tax must be made at the time of crediting such interest to the payee or at the time of its payment in cash or by any other mode, whichever is earlier.

Where any such interest is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such interest is credited may be called “Interest Payable account” or “Suspense account” or by any other name.

The CBDT has, vide Circular No.3/2010 dated 2.3.2010, given a clarification regarding deduction of tax at source on payment of interest on time deposits under section 194A by banks following Core-branch Banking Solutions (CBS) software. It has been clarified that Explanation to section 194A is not meant to 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. It has been further clarified that since no constructive credit to the depositor’s / payee’s account takes place while calculating interest on time deposits on daily or 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 financial year or at
periodic intervals as per practice of the bank or as per the depositor’s / payee’s requirement or on maturity or on encashment of time deposits, whichever event takes place earlier, whenever the aggregate of 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.

**Note** - The time for making the payment of tax deducted at source would reckon from the date of credit of interest made constructively to the account of the payee.

(3) **Rate of TDS**

The rate at which the deduction is to be made is given in Part II of the First Schedule to the Annual Finance Act. The rate at which tax is to be deducted is **10%** both in the case of resident non-corporate assesses and domestic companies.

(4) **Non-applicability of TDS under section 194A**

No deduction of tax shall be made in the following cases:

(a) If the aggregate amount of interest paid or credited during the financial year does not exceed ₹ **5,000**.

This limit is ₹ **10,000** in respect of interest paid on –

(i) time deposits with a banking company;

(ii) time deposits with a co-operative society engaged in banking business; and

(iii) deposits with post office under notified schemes.

The limit will be calculated with respect to income credited or paid by a branch of a banking company or a co-operative society or a public company in case of:

(i) time deposits with a banking company

(ii) time deposits with a co-operative society carrying on the business of banking; and

(iii) deposits with housing finance companies, provided:

- they are public companies formed and registered in India

- their main object is to carry on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

In the case of income credited or paid in respect of time deposits with a banking company or a co-operative bank or a public company with the main object of providing long-term finance for construction or purchase of houses in India for residential purposes, the threshold limit for deduction of tax at source (i.e., ₹ 10,000 or ₹ 5,000, as the case may be) shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company.

The threshold limit will be reckoned with reference to the total interest credited or paid by the banking company or the co-operative society or the public company, as the case
may be, (and not with reference to each branch), where such banking company or co-operative society or public company has adopted core banking solutions.

(b) Interest paid or credited by a firm to any of its partners;

(c) Income paid or credited by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

(d) Interest paid or credited in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf;

(e) Interest income credited or paid in respect of deposits (other than time deposits made on or after 1.7.1995) with
   (i) a bank to which the Banking Regulation Act, 1949 applies; or
   (ii) a co-operative society engaged in carrying on the business of banking.

(f) Interest credited or paid in respect of deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank.

(g) Interest income credited or paid by the Central Government under any provisions of the Income-tax Act, 1961, the Estate Duty Act, the Wealth-tax Act, 1957, the Gift-tax Act, the Companies (Profits) Surtax Act or the Interest Tax Act.

(h) Interest paid or credited to the following entities:
   (i) banking companies, or co-operative societies engaged in the business of banking, including co-operative land mortgage banks;
   (ii) financial corporations established under any Central, State or Provincial Act.
   (iii) the Life Insurance Corporation of India.
   (iv) companies and co-operative societies carrying on the business of insurance.
   (v) the Unit Trust of India; and
   (vi) notified institution, association, body or class of institutions, associations or bodies (National Skill Development Fund has been notified by the Central Government for this purpose)

(i) income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(j) income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed ₹ 50,000.
(k) income paid or payable by an infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank in relation to a zero coupon bond issued on or after 1.6.2005.

**Note** - The expression “time deposits” [for the purpose of (4)(a) and (e) above] means the deposits, including recurring deposits, repayable on the expiry of fixed periods.

### Applicability of provisions for deduction of tax at source under section 194A on interest on fixed deposit made in the name of the Registrar General of Court or the depositor of the Fund on directions of Courts [Circular No.23/2015, dated 28-12-2015]

Section 194A stipulates deduction of tax at source (TDS) on interest other than interest on securities if the aggregate of amount of such interest credited or paid to the account of the payee during the financial year exceeds the specified amount.

In the case of UCO Bank in Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Delhi High Court, thus, held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No.8/2011.

The CBDT has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

### Illustration 3

Examine the TDS implications under section 194A in the cases mentioned hereunder –

(i) On 1.10.2017, Mr. Harish made a six-month fixed deposit of ₹10 lakh @9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2018.

(ii) On 1.6.2017, Mr. Ganesh made three nine month fixed deposits of ₹1 lakh each carrying interest@9% with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 15.2.2018.

(iii) On 1.4.2017, Mr. Rajesh started a 1 year recurring deposit of ₹20,000 per month@8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2018.
Solution

(i) ABC Co-operative Bank has to deduct tax at source@10% on the interest of ₹ 45,000 (9% × ₹ 10 lakh × ½) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 4,500.

(ii) XYZ Bank has to deduct tax at source@10% under section 194A, since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 20,250 [₹1,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of ₹ 10,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 20,250 exceeds the threshold limit of ₹ 10,000, tax has to be deducted@10% under section 194A.

(iii) Tax has to be deducted under section 194A by PQR Bank on the interest of ₹ 10,400 falling due on recurring deposit on 31.3.2018 to Mr. Rajesh, since –

(1) “recurring deposit” is included in the definition of “time deposit”; and

(2) such interest exceeds the threshold limit of ₹ 10,000.

Illustration 4

Maya Bank credited ₹ 73,50,000 towards interest on the deposits in a separate account for macro-monitoring purposes 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 depositors exceeded the limit of ₹ 10,000.

The Assessing Officer disallowed 30% of 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.

Solution

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, thus, apply.

However, the CBDT has, vide Circular No.3/2010 dated 2.3.2010, 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 and wherever the aggregate amount of interest income credited or paid or likely to be credited or paid during the financial year by the bank exceeds the limits specified in section 194A i.e., ₹ 10,000.

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 initiation of penalty proceedings under section 271C is not tenable in law.

15.3.6 Winnings from lotteries, crossword puzzles and horse races [Sections 194B and 194BB]

(1) **Rate of tax on casual income**

Any income of a casual and non-recurring nature of the type of winnings from lotteries, crossword puzzles, card game and other game of any sort, races including horse races, etc. will be charged to income-tax at a flat rate of 30% [Section 115BB].

(2) **TDS on winning from lotteries, crossword puzzles etc.**

According to the provisions of section 194B, every person responsible for paying to any person, whether resident or non-resident, any income by way of winnings from lottery or crossword puzzle or card game and other game of any sort, is required to deduct income-tax therefrom at the rate of 30% if the amount of payment exceeds ₹ 10,000.

(3) **Cases where winnings are partly in kind and partly in cash**

In a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

(4) **Person responsible for deduction of tax under section 194BB**

Section 194BB casts responsibility on the following persons to deduct tax at source -

(i) a bookmaker; or

(ii) a person to whom a license has been granted by the Government under any law for the time being in force -

(a) for horse racing in any race course; or

(b) for arranging for wagering or betting in any race course.

(5) **Threshold limit and rate of TDS under section 194BB**

The obligation to deduct tax at source under section 194BB arises when the above-mentioned persons make payment to any person of any income by way of winnings from any...
horse race in excess of ₹10,000. The rate applicable for deduction of tax at source is 30%.

Tax will have to be deducted at source from winnings from horse races even though the winnings may be paid to the person concerned in installments of less than ₹10,000. Similarly, in cases where the book-maker or other person responsible for paying the winnings, credits such winnings and debits the losses to the individual account of the punter, the set off of the loss against the income would be treated for this purpose as a constructive payment of the income.

Meaning of the expression “horse race”

In the context of the provisions of section 194BB, the expression 'any horse race' used therein must be taken to include, wherever the circumstances so necessitate, more than one horse race. Therefore, winnings by way of jack pot would also fall within the scope of section 194BB.

Illustration 5

Mr. Govind won the first prize in a lottery ticket and the prize was a Maruti car worth ₹5 lacs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

Solution

Section 194B provides that the person responsible for paying to any person, any income by way of winnings from any lottery or crossword puzzle, card game or any other game of any sort and the amount of winning exceeds Rs.10,000, tax shall be deducted at source @ 30%.

However, in case where the winning is wholly in kind, the person responsible for paying the prize shall before releasing the winning, ensure that the tax has been paid in respect of such winning.

The Karnataka High Court in the case of CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1 has held that where the winnings are wholly in kind, the responsibility cast under section 194B is to ensure that the tax is paid by the winner of the prize before the prize is released in his favour. In this regard, the CBDT Circular No.763 dated 18/2/1998 clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.

Therefore, in this case since the entire winning is in kind, it must be ensured that the sum equal to the tax deductible at source (i.e., ₹1,50,000, being @ 30% of ₹5 lacs) is paid by Mr. Govind, before the car is released in his favour. This can be done by collecting ₹1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize.

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15.3.7 Payments to contractors and sub-contractors [Section 194C]

(1) **Applicability of TDS under section 194C**

Section 194C provides for deduction of tax at source from the payment made to resident contractors and sub-contractors.

Any person responsible for paying any sum to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Central Government, a State Government, local authority, statutory corporation, a company, co-operative society, any statutory authority dealing with housing accommodation, any society registered under the Societies Registration Act, 1860, any trust or any university or any firm or any Government of a foreign State or foreign enterprise or any association or body established outside India or an individual, HUF, AOP or BOI subject to tax audit under clauses (a) or (b) of section 44AB in the immediately preceding financial year must deduct tax at source at the prescribed rate from such sum.

(2) **Time of deduction**

Tax has to be deducted at the time of payment of such sum or at the time of credit of such sum to the account of the contractor, whichever is earlier.

Where any such sum is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such sum is credited may be called “Suspense account” or by any other name.

However, relief has been provided in respect of payments made by individuals/HUFs to a contractor exclusively for personal purposes.

(3) **Rate of TDS**

The rate of TDS under section 194C on payments to contractors would be 1%, where the payee is an individual or HUF and 2% in respect of other payees. The same rates of TDS would apply for both contractors and sub-contractors.

The applicable rates of TDS under section 194C are as follows –

<table>
<thead>
<tr>
<th>Payee</th>
<th>TDS rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual / HUF contractor/sub-contractor</td>
<td>1%</td>
</tr>
<tr>
<td>Other than individual / HUF contractor/sub-contractor</td>
<td>2%</td>
</tr>
<tr>
<td>Contractor in transport business (if PAN is furnished)</td>
<td>Nil</td>
</tr>
<tr>
<td>Sub-contractor in transport business (if PAN is furnished)</td>
<td>Nil</td>
</tr>
</tbody>
</table>

(4) **Threshold limit for deduction of tax at source under section 194C**

No deduction will be required to be made if the consideration for the contract does not
exceed ₹ 30,000. However, to prevent the practice of composite contracts being split up into contracts valued at less than ₹ 30,000 to avoid tax deduction, it has been provided that tax will be required 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 ₹ 1,00,000 in the aggregate during a financial year.

Therefore, even if a single payment to a contractor does not exceed ₹ 30,000, TDS provisions under section 194C would be attracted where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid to the contractor during the financial year exceeds ₹ 1,00,000.

**Illustration 6**

ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y.2017-18–

- ₹ 20,000 on 1.5.2017
- ₹ 25,000 on 1.8.2017
- ₹ 28,000 on 1.12.2017

On 1.3.2018, a payment of ₹ 30,000 is due to Mr. X on account of a contract work.

**Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.**

**Solution**

In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y.2017-18 exceeds ₹ 1,00,000 (on account of the last payment of ₹ 30,000, due on 1.3.2018, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted@1% on the entire amount of ₹ 1,03,000 from the last payment of ₹ 30,000 and the balance of ₹ 28,970 (i.e., ₹ 30,000 – ₹ 1,030) has to be paid to Mr. X.

(5) **Definition of work**

Work includes –

(a) advertising;

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;
(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.

However, “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, as such a contract is a contract for ‘sale’. However, this will not be applicable to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract).

It may be noted that the term “work” would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

(6) **Non-applicability of TDS under section 194C**

No deduction is required to be made from the sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor.

In order to convey the true intent of law, it has been clarified that this relaxation from the requirement to deduct tax at source shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor, who fulfills the following three conditions cumulatively -

**Meaning of Goods carriage:**

Goods carriage means -

(i) any motor vehicle constructed or adapted for use solely for the carriage of goods; or
(ii) any motor vehicle not so constructed or adapted, when used for the carriage of goods.

The term “motor vehicle” does not include vehicles having less than four wheels and with engine capacity not exceeding 25cc as well as vehicles running on rails or vehicles adapted for use in a factory or in enclosed premises.

(7) **Important Points**

(i) The deduction of income-tax at source from payments made to non-resident contractors will be governed by the provisions of section 195.

(ii) The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to ‘works contracts’ and ‘labour contracts’ and will not cover contracts for sale of goods.

(iii) Contracts for rendering professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants etc., cannot be regarded as contracts for carrying out any “work” and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts under this section. Separate provisions for fees for professional services have been made under section 194J.

(iv) The deduction of income-tax must be made at the time of credit of the sum to the account of the contractor, 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.

(8) **Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas [Circular No. 9/2012 dated 17.10.2012]**

In case the Owner/Seller of the natural gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a ‘contract for sale’ and not a ‘works contract’ as envisaged in section 194C. Therefore, in such circumstances, the provisions of Chapter XVIIB are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position.

However, transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates.
Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting [Circular No. 04/2016, dated 29-2-2016]

The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a ‘work contract’ liable for tax deduction at source under section 194C or a contract for ‘professional or technical services’ liable for tax deduction at source under section 194J.

In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and

(ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, such contract is covered by the definition of the term `work` in section 194C and, therefore, subject to TDS under that section.

However, in a case where the telecaster/broadcaster acquires only the telecasting/broadcasting rights of the content already produced by the production house, there is no contract for “carrying out any work”, as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

Illustration 7

Bharathi Cements Ltd. purchased 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 01.09.2017 to 20.03.2018, the value of jute bags supplied is ₹ 8,00,000, for which the invoice has been raised on 20.03.2018. 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 ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

Solution

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. This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.

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

Illustration 8

Alap Ltd. has made following payments on various dates in financial year 2017-18 to Vilambit Ltd. towards work done under different contracts:

<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Date of payment</th>
<th>Amount (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>5.5.2017</td>
<td>20,000</td>
</tr>
<tr>
<td>2.</td>
<td>6.6.2017</td>
<td>15,000</td>
</tr>
<tr>
<td>3.</td>
<td>8.8.2017</td>
<td>25,000</td>
</tr>
<tr>
<td>4.</td>
<td>10.12.2017</td>
<td>25,000</td>
</tr>
<tr>
<td>5.</td>
<td>29.01.2018</td>
<td>17,000</td>
</tr>
</tbody>
</table>

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 ₹ 14,000 only and there was no further contract during the year?

Solution

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 ₹ 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, Alap Ltd’s contention is not correct and tax is required to be deducted at source on the whole amount of ₹ 1,02,000 from the last payment of ₹17,000 towards Contract No.5 on account of which the aggregate amount exceeded ₹ 1,00,000.

However, no tax deduction is to be made if the value of the last contract is ₹ 14,000 as the aggregate amount in such case would only be ₹ 99,000, which is below the aggregate monetary limit of ₹ 1,00,000.

15.3.8 Insurance Commission [Section 194D]

(1) Applicability of TDS under section 194D

Section 194D casts responsibility on any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including the business relating to the continuance, renewal or revival of policies of insurance) to deduct tax at source.
15.24 DIRECT TAX LAWS

(2) **Rate of TDS**

Such person is required to deduct income-tax at the rate of 5%, both in the case of resident non-corporate assesses and domestic companies.

(3) **Time of deduction**

The deduction is to be made at the time of the credit of the income to the account of the payee or at the time of making the payment (by whatever mode) to the payee, whichever is earlier.

(4) **Threshold limit**

The tax under this section has to be deducted at source only if the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year to the account of the payee exceeds ₹ 15,000.

15.3.9 Payment in respect of life insurance policy [Section 194DA]

(1) **Taxability of sum received under a life insurance policy**

Under section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfillment of conditions specified under the said section.

Consequently, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) is taxable.

(2) **Rate of TDS**

For ensuring a proper mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempt under section 10(10D), section 194DA provides for deduction of tax at the rate of 1% on any sum paid to a resident under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D).

(3) **Threshold limit**

However, tax deduction is required only if the payment or aggregate payment in a financial year to an assessee is ₹ 1,00,000 or more. This is for alleviating the compliance burden on the small tax payers.

**Illustration 9**

Examine the applicability of the provisions for tax deduction at source under section 194DA in the following cases -

(i) Mr. X, a resident, is due to receive ₹ 4.50 lakhs on 31.3.2018, towards maturity proceeds of LIC policy taken on 1.4.2015, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000.
(ii) Mr. Y, a resident, is due to receive ₹ 2.75 lakhs on 31.3.2018 on LIC policy taken on 31.3.2012, for which the sum assured is ₹ 2.50 lakhs and the annual premium is ₹ 35,000.

(iii) Mr. Z, a resident, is due to receive ₹ 95,000 on 1.10.2017 towards maturity proceeds of LIC policy taken on 1.10.2012 for which the sum assured is ₹ 90,000 and the annual premium was ₹ 15,000.

Solution

(i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs are not exempt under section 10(10D) in the hands of Mr. X. Therefore, tax is required to be deducted @1% under section 194DA on the maturity proceeds of ₹ 4.50 lakhs payable to Mr. X.

(ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 2.75 lakhs due to Mr. Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr. Y.

(iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 would not be exempt under section 10(10D) in the hands of Mr. Z, the tax deduction provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

15.3.10 Payments to non-resident sportsmen or sports association [Section 194E]

(1) **Applicability**

This section provides for deduction of tax at source in respect of any income referred to in section 115BBA payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution.

(2) **Rate of TDS**

Deduction of tax at source @20% should be made by the person responsible for making the payment.

(3) **Time of deduction of tax**

Such tax deduction should be at the time of credit of such income 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.

(4) **Income referred to in section 115BBA**

(i) income received or receivable by a non-resident sportsman (including an athlete) by way of-

(a) participation in any game or sport in India (However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein); or
(b) advertisement; or
(c) contribution of articles relating to any game or sport in India in newspapers, magazines or journals.

(ii) Guarantee amount paid or payable to a non-resident sports association or institution in relation to any game or sport played in India. However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein.

(iii) income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

Illustration 10

Calculate the amount of tax to be deducted at source (TDS) on payment made to Ricky Ponting, an Australian cricketer, by a newspaper for contribution of articles ₹25,000.

Solution

Under section 194E, the person responsible for payment of any amount to a non-resident sportsman for contribution of articles relating to any game or sport in India in a newspaper shall deduct tax @ 20%. Further, since Ricky Ponting is a non-resident, education cess@2% and secondary and higher education cess@1% on TDS would also be added.

Therefore, tax to be deducted = ₹25,000 x 20.60% = ₹5,150.

15.3.11 Payments in respect of deposits under National Savings Scheme etc. [Section 194EE]

(1) Rate of TDS

The person responsible for paying to any person any amount from National Savings Scheme Account shall deduct income-tax thereon at the rate of 10% at the time of payment.

(2) Threshold limit

No such deduction shall be made where the amount of payment or the aggregate amount of payments in a financial year is less than ₹2,500.

(3) Non-applicability of TDS under section 194EE

The provisions of this section shall not apply to the payments made to the heirs of the assessee.

15.3.12 Repurchase of units by Mutual Fund or Unit Trust of India [Section 194F]

A person responsible for paying to any person any amount on account of repurchase of units covered under section 80CCB(2)\(^1\) shall deduct tax at source at the rate of 20% at the time of payment of such amount.

\(^1\) Deduction u/s 80CCB was available in respect of investment made in notified units of UTI or mutual funds during the previous years 1990-91 and 1991-92.
15.3.13 Commission etc. on the sale of lottery tickets [Section 194G]

(1) **Applicability and Rate of TDS**

Under section 194G, the person responsible for paying to any person any income by way of commission, remuneration or prize (by whatever name called) on lottery tickets in an amount exceeding ₹15,000 shall deduct income-tax thereon at the rate of 5%.

(2) **Time of deduction of tax**

Such deduction should be made at the time of credit of such income to the account of the payee or at the time of payment of such income by cash, cheque, draft or any other mode, whichever is earlier.

Where any such income is credited to any account, whether called “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 the provisions of this section shall apply accordingly.

15.3.14 Commission or brokerage [Section 194H]

(1) **Applicability and Rate of TDS**

Any person who is responsible for paying any income by way of commission (other than insurance commission) or brokerage to a resident shall deduct income tax at the rate of 5%.

However, an individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him do not exceed the monetary limits of ₹1 crore and ₹50 lakhs, respectively, specified under section 44AB during the immediately preceding financial year is not liable to deduct tax at source.

(2) **Time of deduction**

The deduction shall be made at the time such income is credited to the account of the payee or at the time of payment in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

Even where income is credited to some other account, whether called “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 to the account of the payee for the purposes of this section.

(3) **Threshold limit**

No deduction is required if the amount of such income or the aggregate of such amount does not exceed ₹15,000 during the financial year.

(4) **Meaning of “Commission or brokerage”**

“Commission or brokerage” includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered, or for any
services in the course of buying or selling of goods, or in relation to any transaction relating to any asset, valuable article or thing, other than securities.

(5) **Non-applicability of TDS under section 194H**

This section is not applicable to professional services. “Professional Services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as notified by the CBDT for the purpose of compulsory maintenance of books of account under section 44AA.

Further, there would be no requirement to deduct tax at source on commission or brokerage payments by BSNL or MTNL to their public call office (PCO) franchisees.

(6) **Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements**

[Circular No. 05/2016, dated 29-2-2016]

There are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and

(ii) Payment by advertising agency to the television channel/newspaper company

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified in Question Nos. 1 & 2 that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' for attracting the provisions of section 194H.

The CBDT has clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the CBDT’s Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

**Illustration 11**

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 but not exceeding the maximum published price. Commission at the rate of 9% of minimum fixed commercial price was deducted under section 194H by the company. The Assessing Officer contended that the liability for tax deduction at source is attracted on the difference between the minimum fixed commercial price
and the maximum published price by treating it as "additional special commission" in the hands of the agents.

Is the contention of Assessing Officer tenable in law?

Solution

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

In the present case, B. Airways Ltd. correctly deducted tax at source under section 194H from the commission @9% of the minimum fixed commercial 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 published price. However, the Assessing Officer contented that the airline company was required to deduct tax at source on the difference between the minimum fixed commercial price and the maximum published 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 maximum published price and the minimum fixed commercial price cannot be taken as “additional special commission” in the hands of the agents. This is because the maximum published price is the maximum price and the airline company has granted permission to the agents to sell the tickets at a price lower than the maximum 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 be ascertainable by the airline company. However, it is not so ascertainable in this case, since the agents are given discretion to sell the tickets at any rate between the minimum fixed commercial price and the maximum 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 the 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 maximum published price and the minimum fixed commercial price, even though the amount earned by the agent over and above the minimum fixed commercial price is taxable as income in their hands.

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

Illustration 12

Discuss the following issues in the context of the provisions of the Income-tax Act, 1961, with specific reference to clarification given by the Central Board of Direct Taxes -

(i) Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for
tax deduction at source under section 194C? Discuss.

Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

(ii) Mudra Adco Ltd., an advertising company, has retained a sum of ₹15 lakhs, towards charges for procuring and canvassing advertisements, from payment of ₹1 crore due to Cloud TV, a television channel, and remitted the balance amount of ₹85 lakhs to the television channel. Would the provisions of tax deduction at source under section 194H be attracted on the sum of ₹15 lakhs retained by the advertising company?

Solution

(i) In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term ‘work’ under section 194C. Therefore, the payment of ₹50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for “carrying out any work”, as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

(ii) The issue of whether fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' to attract the provisions of tax deduction at source has been clarified by the CBDT vide its Circular No.5/2016 dated 29.2.2016.

The relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H. In view of the same, the CBDT has clarified that no liability to deduct tax is attracted on payments made by television channels to the advertising agency for booking or procuring of or canvassing for advertisements.

Accordingly, in view of the clarification given by CBDT, no tax is deductible at source on the amount of ₹15 lakhs retained by Mudra Adco Ltd., the advertising company, from payment due to Cloud TV, a television channel.

15.3.15 Rent [Section 194-I]

(1) **Applicability and Rate of TDS**

Any person who is responsible for paying to a resident any income by way of rent shall deduct income tax at the rate of:

(i) 2% in respect of rent for plant, machinery or equipment;
(ii) **10%** in respect of other rental payments (i.e., rent for use of any land or building, including factory building, or land appurtenant to a building, including factory building, or furniture or fixtures).

However, an individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him do not exceed the monetary limits of `1 crore and ` 50 lakhs, respectively, specified under section 44AB during the immediately preceding financial year is not liable to deduct tax at source.

Further, no deduction shall be made under this section from rent credited or paid to a business trust, being a REIT, in respect of any real estate asset owned directly by it.

(2) **Time of deduction**

This deduction is to be made at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

Where any such income is credited to any account, whether called “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 the provisions of this section will apply accordingly.

(3) **Threshold limit**

No deduction need be made where the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of the payee does not exceed `1,80,000.

(4) **Meaning of Rent**

“Rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any –

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings,

whether or not any or all of the above are owned by the payee.
Applicability of TDS provisions under section 194-I to payments made by the customers on account of cooling charges to the cold storage owners

CBDT Circular No.1/2008 dated 10.1.2008 provides clarification regarding applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194-C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

Applicability of TDS provisions under section 194-I to service tax component of rental income

CBDT Circular No.4/2008 dated 15.4.2008 provides clarification on deduction of tax at source (TDS) on service tax component of rental income under section 194-I.

As per the provisions of 194-I, tax is deductible at source on income by way of rent paid to any resident. Further, rent has been defined in 194-I to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

(a) land; or
(b) building (including factory building); or
(c) land appurtenant to a building (including factory building); or
(d) machinery; or
(e) plant; or
(f) equipment; or
(g) furniture; or
(h) fittings,
whether or not any or all of the above are owned by the payee.

Service tax paid by the tenant doesn’t 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.
Non-deduction of tax at source on the service tax component comprised in payments made to residents, if the service-tax component is indicated separately

The CBDT had issued Circular No.4/2008 dated 15.4.2008 clarifying that tax is to be deducted at source under section 194-I, on the amount of rent paid/payable without including the service tax component. However, this Circular was silent regarding deduction of tax at source on the service tax component of other payments on which TDS provisions are applicable.

Accordingly, in exercise of the powers conferred under section 119, the Board has, vide Circular No.1/2014 dated 13.1.2014, clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid/payable without including such service tax component.

(7) Clarification on applicability of TDS provisions of section 194-I on lumpsum lease premium paid for acquisition of long term lease [Circular No.35/2016, dated 13-10-2016]

The issue of whether or not TDS under section 194-I is applicable on 'lump sum lease premium' or 'one-time upfront lease charges" paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by the CBDT. The CBDT has clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I. Therefore, such payments are not liable for TDS under section 194-I.

The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and parking facility for the aircraft are for the “use of the land” by the airline company came up before the Supreme Court in Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the
AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in Singapore Airlines case and overruled the view taken by the Delhi High Court in United Airlines/Japan Airlines case.

Illustration 13

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.

Solution

The CBDT Circular No.4/2008 dated 15.04.2008 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 of the 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.

Note - In respect of payments other than rent, the CBDT has, vide Circular No.1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid/payable without including the service tax component.

Illustration 14

ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2017 on a rent of ` 20,000 per month. It also took on hire machinery from J with effect from 1.10.2017 on hire 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 2017-18 were ` 1,40,000 and ` 90,000, respectively, which were credited by ABC Ltd. to the account of J in its books of account on 31.3.2018. Examine the obligation of ABC Ltd. with regard to deduction of tax at source in respect of the rent and hire charges.
Solution

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 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 another 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. In this case, since the payment for rent and hire charges credited to the account of J, the payee, aggregates to ₹ 2,30,000 (₹ 1,40,000 + ₹ 90,000), tax is deductible at source under section 194-I. Tax is deductible@10% on ₹ 1,40,000 (rent of building) and @2% on ₹ 90,000 (hire charges of machinery).

15.3.16 Payment on transfer of certain immovable property other than agricultural land [Section 194-IA]

(1) **Applicability and Rate**

For the twin purposes of having a reporting mechanism of transactions in the real estate sector and also collecting tax at the earliest point of time, section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transfer shall deduct tax, at the rate of 1% of such sum.

(2) **Time of deduction**

The deduction is to be made at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.

(3) **Threshold limit**

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property is less than ₹ 50 lakh.

(4) **Non-applicability of TDS under section 194-IA**

Since tax deduction at source for compulsory acquisition of immovable property is covered under section 194LA, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(5) **No requirement to obtain TAN**

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IA.
**Time and mode of payment of tax deducted at source under section 194-IA to the credit of Central Government, furnishing challan-cum-statement and TDS Certificate [Rules 30, 31A & 31]**

Such sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB [Rule 30]. The amount so deducted has to be deposited to the credit of the Central Government by electronic remittance within the above mentioned time limit, into RBI, SBI or any authorized bank [Rule 30].

Every person responsible for deduction of tax under section 194-IA shall also furnish to the DGIT (Systems) or any person authorized by him, a challan-cum-statement in Form No.26QB electronically within 30 days from the end of the month in which the deduction is made [Rule 31A].

Every person responsible for deduction of tax under section 194-IA shall furnish the TDS certificate in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QB under Rule 31A, after generating and downloading the same from the web portal specified by the DGIT (Systems) or the person authorized by him [Rule 31].

**Illustration 15**

Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2017. He has purchased the house property and the land in the year 2016 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2017, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Determine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

**Solution**

<table>
<thead>
<tr>
<th>(i)</th>
<th>Tax implications in the hands of Mr. X</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As per section 50C, the stamp duty value of house property (i.e. ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 45 lakh (i.e., ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2018-19.</td>
</tr>
<tr>
<td></td>
<td>Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(ii)</th>
<th>Tax implications in the hands of Mr. Y</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(x), if such difference exceeds ₹ 50,000.</td>
</tr>
<tr>
<td></td>
<td>Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr. Y under section 56(2)(x).</td>
</tr>
<tr>
<td></td>
<td>Since agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of receipt of agricultural land for inadequate consideration, since the</td>
</tr>
</tbody>
</table>
### 15.3.17 Payment of rent by certain individuals or Hindu undivided family [Section 194-IB]

#### (1) Applicability and Rate of TDS

New section 194-IB has been inserted w.e.f. 1st June, 2017 to require any person, being an individual or a HUF, other than those individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits of ₹ 1 crore and ₹ 50 lakhs, respectively, specified under section 44AB in the immediately preceding financial year, responsible for paying to a resident any income by way of rent, to deduct income tax at the rate of 5%.

#### (2) Threshold limit

Under this section, tax has to be deducted at source only if the amount of such rent exceeds ₹ 50,000 for a month or part of a month during the previous year.

#### (3) Time of deduction

This deduction is to be made at the time of credit of such rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

#### (4) No requirement to obtain TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IB.

#### (5) Meaning of “Rent”

“Rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

#### (6) Deduction not to exceed rent for last month

Section 206AA requires providing of Permanent Account Number (PAN) of the deductee to the deductor, failing which tax shall be deducted at a higher rate (i.e., higher of the rate provided in the relevant section, rates in force and 20%). Where the tax is required to be
15.38 DIRECT TAX LAWS

... deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Illustration 16

Mr. X, a salaried individual, pays rent of ₹ 55,000 per month to Mr. Y from June, 2017. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st December, 2017?

Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

Solution

Since Mr. X pays rent exceeding ₹ 50,000 per month in the F.Y. 2017-18, he is liable to deduct tax at source @5% of such rent for F.Y. 2017-18 under section 194-1B. Thus, ₹ 27,500 [₹ 55,000 x 5% x 10] has to be deducted from rent payable for March, 2018.

If Mr. X vacated the premises in December, 2017, then tax of ₹ 19,250 [₹ 55,000 x 5% x 7] has to be deducted from rent payable for December, 2017.

In case Mr. Y does not provide his PAN to Mr. X, tax would be deductible @20%, instead of 5%.

In case 1 above, this would amount to ₹ 1,10,000 [₹ 55,000 x 20% x 10] but the same has to be restricted to ₹ 55,000, being rent for March, 2018.

In case 2 above, this would amount to ₹ 77,000 [₹ 55,000 x 20% x 7] but the same has to be restricted to ₹ 55,000, being rent for December, 2017.

15.3.18 Payment under specified agreement [Section 194-IC]

(1) **Applicability and Rate**

This section casts responsibility on any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under a specified agreement under section 45(5A), to deduct income-tax at the rate of 10%.

(2) **Time of deduction**

This deduction is to be made 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 cheque or draft or by any other mode, whichever is earlier.

(3) **Non-applicability of section 194-IA**

Since tax deduction at source for specified agreement under section 45(5A) is covered under section 194-IC, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(4) **Meaning of specified agreement**

Specified agreement under section 45(5A):
It means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both.

The consideration, in this case, is a share, being land or building or both in such project; Part of the consideration may also be in cash.

15.3.19 Fees for professional or technical services [Section 194J]

(1) **Applicability and Rate of TDS**

Every person, who is responsible for paying to a resident any sum by way of –

(i) fees for professional services; or

(ii) fees for technical services; or

(iii) any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or

(iv) royalty, or

(v) non-compete fees referred to in section 28(va)

shall deduct tax at source at the rate of 10%.

*However, in case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source @ 2% [w.e.f. 1st June, 2017]*

(2) **Time of deduction**

The deduction is to be made 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.

Where any fees for professional or technical services is credited to any account, whether called suspense account or by any other name, in the books of accounts of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and tax has to be deducted accordingly.

(3) **Threshold limit**

No tax deduction is required if the amount of fees or the aggregate of the amounts of fees credited or paid or likely to be credited or paid during a financial year does not exceed ₹ 30,000 in the case of fees for professional services, ₹ 30,000 in the case of fees for technical services, ₹ 30,000 in the case of royalty and ₹ 30,000 in the case of non-compete fees.

The limit of ₹ 30,000 under section 194J is applicable separately for fees for professional services, fees for technical services, royalty and non-compete fees referred to in section
28(va). It implies that if the payment to a person towards each of the above is less than ₹ 30,000, no tax is required to be deducted at source, even though the aggregate payment or credit exceeds ₹ 30,000. However, there is no such exemption limit for deduction of tax on any remuneration or fees or commission payable to director of a company.

Illustration 17

XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh on 2.8.2017 towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Discuss whether TDS provisions under section 194J are attracted.

Solution

TDS provisions under section 194J would not get attracted, since the limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y.2017-18.

(4) **Non-applicability of TDS under section 194J**

An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him do not exceed the monetary limit of ₹ 1 crore and ₹ 50 lakhs, respectively, specified under section 44AB during the immediately preceding the financial year is not liable to deduct tax at source.

Further, an individual or Hindu Undivided family, shall not be liable to deduct income-tax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes.

(5) **Meaning of “Professional services”**

“Professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.

Other professions notified for the purposes of section 44AA are as follows:

(a) Profession of “authorised representatives”;
(b) Profession of “film artist”;
(c) Profession of “company secretary”.

The CBDT has notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

(i) Sports Persons,
DEDUCTION, COLLECTION AND RECOVERY OF TAX

(ii) Umpires and Referees,
(iii) Coaches and Trainers,
(iv) Team Physicians and Physiotherapists,
(v) Event Managers,
(vi) Commentators,
(vii) Anchors and
(viii) Sports Columnists.

Accordingly, the requirement of TDS as per section 194J would apply to all the aforesaid professions. The term “profession”, as such, is of a very wide import. However, the term has been defined in this section exhaustively. For the purposes of TDS, therefore, all other professions would be outside the scope of section 194J. For example, this section will not apply to professions of teaching, sculpture, painting etc. unless they are notified.

(6) **Meaning of “Fees for technical services”**

Explanation (b) to section 194J provides that the term ‘fees for technical services’ shall have the same meaning as in Explanation 2 to section 9(1)(vii). The term ‘fees for technical services’ as defined in Explanation 2 to section 9(i)(vii) means any consideration (including any lump sum consideration) for rendering of any of the following services:

(i) Managerial services;
(ii) Technical services;
(iii) Consultancy services;
(iv) Provision of services of technical or other personnel.

It is expressly provided that the term ‘fees for technical services’ will not include following types of consideration:

(i) Consideration for any construction, assembly, mining or like project, or
(ii) Consideration which is chargeable under the head ‘Salaries’.

(7) **TPAs liable to deduct tax under section 194J on payment to hospitals on behalf of insurance companies**

The CBDT has, through Circular No.8/2009 dated 24.11.2009, clarified that TPAs (Third Party Administrator’s) 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. This is because the services rendered by hospitals to various patients are
primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

Consequently, all such past transactions between TPAs and hospitals would fall within the provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee-in-default in respect of such tax and also liable for charging of interest under section 201(1A).

However, no proceedings under section 201 may be initiated after the expiry of six years from the end of the financial year in which payments have been made without deducting tax at source etc. by the TPA's. Further, the tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.). A certificate from the auditor of the deductee-assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) till payment of taxes by the deductee-assessee or liability for penalty under section 271C, as the case may be.

**In the case of CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC) the Supreme Court dealt on whether transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J.**

*It observed that technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that would distinguish or identify a service provider from a facility offered.*

*The Apex Court, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service.*

*Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.*

(8) **Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)**

As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property
or information is deemed to accrue or arise in India. The term “royalty” means consideration for transfer of all or any right in respect of certain rights, property or information.

The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J and section 195 would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty.

**Note** - The Central Government has, vide Notification No.21/2012 dated 13.6.2012, effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if -

1. the software is acquired in a subsequent transfer without any modification by the transferor;
2. tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and
3. the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

**Illustration 18**

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

**Solution**

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 services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes 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 coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.
15.3.20 Payment of compensation on acquisition of certain immovable property
[Section 194LA]

(1) **Applicability**

Section 194LA provides for deduction of tax at source by a person responsible for paying to a resident any sum in the nature of –

(i) compensation or the enhanced compensation or

(ii) the consideration or the enhanced consideration

on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land).

Immovable property means any land (other than agricultural land) or any building or part of a building.

(2) **Rate of TDS**

The amount of tax to be deducted is 10% of such sum mentioned in (1) above.

(3) **Time of deduction**

The tax should be deducted at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(4) **Threshold limit**

No tax is required to be deducted where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed ₹ 2,50,000.

(5) **Non-applicability of TDS under section 194LA**

No tax is required to be deducted where payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

15.3.21 Income by way of interest from Infrastructure Debt Fund [Section 194LB]

(1) **Special rate of tax on interest received by non-residents from notified infrastructure debt funds**

Interest income received by a non-corporate non-resident or a foreign company from notified infrastructure debt funds set up in accordance with the prescribed guidelines would be subject to tax at a concessional rate of 5% under section 115A on the gross amount of such interest income as compared to tax @20% on other interest income of non-resident. The concessional rate of tax is expected to give a fillip to infrastructure and encourage inflow of long-term foreign funds to the infrastructure sector.
DEDUCTION, COLLECTION AND RECOVERY OF TAX

(2) **Rate of TDS**

Accordingly, tax would be deductible @5% on interest paid/credited by such fund to a non-resident/foreign company.

(3) **Time of deduction**

The person responsible for making the payment shall, at the time of credit of such income 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 income-tax @5%.

15.3.22 Income by way of interest from an Indian company [Section 194LC]

(1) **Concessional rate of tax on interest on foreign currency borrowings by an Indian company or business trust**

Interest paid by an Indian company or business trust\(^2\) to a foreign company or a non-corporate non-resident in respect of borrowing made in foreign currency from sources outside India between 1.7.2012 and 30.6.2020 would be subject to tax at a concessional rate of 5% on gross interest (as against the rate of 20% of gross interest applicable in respect of other interest received by a non-corporate non-resident or foreign company from Government or an Indian concern on money borrowed or debt incurred by it in foreign currency).

To avail this concessional rate, the borrowing should be from a source outside India under a loan agreement at any time between 1.7.2012 and 30.6.2020 or by way of issue of long-term infrastructure bonds during the period between 1.7.2012 and 30.9.2014 or by way of issue of any long-term bond, including long-term infrastructure bonds during the period between 1.10.2014 and 30.6.2020 and approved by the Central Government in this behalf.

The interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of 5%.

(2) **Rate of TDS**

Such interest paid by an Indian company to a non-corporate non-resident or a foreign company would be subject to TDS@5% under section 194LC.

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\(^2\) Business trust means a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognized stock exchange, in accordance with the regulations made under the SEBI Act, 1992 and notified by the Central Government in this behalf.

**Note:** The TDS provisions under section 194LBA relating to income from units of a business trust and section 194LBB relating to income in respect of units of investment fund have been discussed in Chapter 12 on Assessment of various entities.
Extension of applicability of concessional rate of TDS

The benefit of concessional rate of TDS under section 194LC is extended to interest payable in respect of monies borrowed by an Indian company or business trust from a source outside India by way of issue of rupee denominated bond issued before 1st July, 2020.

Non-applicability of higher rate of TDS under section 206AA for non-furnishing of PAN

Levy of higher rate of TDS@20% under section 206AA in the absence of PAN would not be attracted in respect of payment of interest on long-term bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.

Interest on Government securities or rupee-denominated bonds of an Indian company payable to a Foreign Institutional Investor (FII) or a Qualified Foreign Investor (QFI) [Section 194LD]

Applicability and Rate of TDS

Section 194LD provides that any income by way of interest payable during the period between 1.6.2013 and 30.6.2020 in respect of investment made by an FII or QFI in a rupee denominated bond of an Indian company or a Government security, shall be subject to tax deduction at source at a concessional rate of 5% (as against the rate of 20% of interest applicable in respect of other interest received by a QFI or FII).

The interest to the extent the same does not exceed the interest calculated at the rate notified by the Central Government in this behalf will be subject to tax deduction at a concessional rate of 5%.

Time of deduction

Any person who is responsible for paying to a person being a FII or a QFI, any such interest shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon@5%.

Meaning of FII and QFI

<table>
<thead>
<tr>
<th>(i)</th>
<th>FII</th>
<th>Foreign Institutional Investors specified by the Central Government by notification in the Official Gazette.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ii)</td>
<td>QFI</td>
<td>Qualified Foreign Investors i.e., Foreign Investors, being non-residents, who meet certain KYC requirements under SEBI laws and are hence permitted to invest in equity and debt schemes of Mutual Funds, thereby enabling Indian Mutual Funds to have direct access to foreign investors and widen the class of foreign investors in Indian equity and debt market. <strong>QFI does not include FII.</strong></td>
</tr>
</tbody>
</table>
15.3.24 Other sums (payable to non-residents) [Section 195]

(1) **Applicability**

Any person responsible for paying interest (other than interest referred to in section 194LB or section 194LC or section 194LD) or any other sum chargeable to tax (other than salaries) to a non-corporate non-resident or to a foreign company is liable to deduct tax at source at the rates prescribed by the relevant Finance Act. Such persons are also required to furnish the information relating to payment of any sum in such form and manner as may be prescribed by the CBDT.

**Payee to be a non-resident** - In order to subject an item of income to deduction of tax under this section the payee must be a non-corporate non-resident or a foreign company.

**Payer may be a resident or non-resident** - Under section 195(1), the obligation to deduct tax at source from interest and other payments to a non-resident, which are chargeable to tax in India, is on “any person responsible for paying to a non-resident or to a foreign company”. The words “any person” used in section 195(1) is intended to include both residents and non-residents. Therefore, a non-resident person is also required to deduct tax at source before making payment to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. Therefore, if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

**Explanation 2** clarifies that the obligation to comply with section 195(1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has:-

(a) a residence or place of business or business connection in India; or

(b) any other presence in any manner whatsoever in India.

(2) **Time of deduction**

The tax is to be deducted at source at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

Where any interest or other sum as aforesaid 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.

However, in the case of interest payable by the Government or a public sector bank within the meaning of section 10(23D) or a public financial institution within the meaning of section 10(23D), deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.
(3) **Payments subject to tax deduction**

The statutory obligation imposed under this section would apply for the purpose of deduction of tax at source from any sum being income assessable to tax (other than salary income) in the hands of the non-resident/foreign company. However, no deduction shall be made in respect of any dividends declared/distributed/paid by a domestic company, which is exempt in the hands of the shareholders under section 10(34).

Payment to a non-resident by way of royalties and payments for technical services rendered in India are common examples of sums chargeable under the provisions of the Act to which the liability for deduction of tax at source would apply.

(4) **Certificate of non-deduction of tax at source**

(i) Any person entitled to receive any interest or other sum on which income-tax has to be deducted under section 195(1) may make an application in the prescribed form to the Assessing Officer for grant of certificate authorizing him to receive such interest or other sum without deduction of tax thereunder.

(ii) Where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom certificate is granted make payment of such interest or other sum without deduction of tax at source under section 195(1), so long as the certificate in force.

(iii) Such certificate shall remain in force till the expiry of the period specified therein. However, if it is cancelled by the Assessing Officer before the expiry of such period, the certificate shall remain in force till such cancellation.

(iv) The CBDT is empowered to make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of certificate. While doing so, it should take into account the convenience of the asessees and the interests of the revenue.

(v) Such Rules would provide for the conditions subject to which such certificate may be granted and any other matter connected therewith.

(5) **Person responsible for paying any sum to non-resident to furnish prescribed information**

Section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax under the provisions of the Act, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and prescribed manner.

(6) **Specified class or classes of persons, making payment to the non-resident, to mandatorily make application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax**

(i) Under section 195(1), any person responsible for paying to a non-corporate non-resident or to a foreign company, any interest or any other sum chargeable under the provisions of the
Act (other than salary), has to deduct tax at source at the rates in force.

(ii) Under section 195(2), where the person responsible for paying any such sum chargeable to tax under the Act (other than salary) to a non-resident, considers that the whole of such sum would not be income chargeable in the hands of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable. When the Assessing Officer so determines, the appropriate proportion, tax shall be deducted under section 195(1) only on that proportion of the sum which is so chargeable.

(iii) Consequent to the retrospective amendments in section 2(47), section 2(14) and section 9(1) by the Finance Act, 2012, sub-section (7) in section 195 provides that, notwithstanding anything contained in sections 195(1) and 195(2), the CBDT may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-corporate non-resident or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable to tax. Where the Assessing Officer determines the appropriate proportion of the sum chargeable, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

(iv) Consequently, where the CBDT specifies a class of persons or cases, the person responsible for making payment to a non-corporate non-resident or a foreign company in such cases has to mandatorily make an application to the Assessing Officer, whether or not such payment is chargeable under the provisions of the Act.

(7) Procedure for refund of TDS under section 195 to the person deducting tax in cases where tax is deducted at a higher rate prescribed in the DTAA

(i) The CBDT has, through Circular No.7/2011 dated 27.9.2011, modified Circular No.07/2007, dated 23.10.2007 which laid down the procedure for refund of tax deducted at source under section 195 of the Income-tax Act, 1961 to the person deducting tax at source from the payment to a non-resident. The said Circular allowed refund to the person making payment under section 195 in the circumstances indicated therein as the income does not accrue to the non-resident or if the income is accruing, no tax is due or tax is due at a lesser rate. The amount paid to the Government in such cases to that extent does not constitute tax.

(ii) The said Circular, however, did not cover a situation 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. Since the law requires deduction of tax at a rate prescribed in the relevant 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.

(iii) Accordingly, in order to remove the genuine hardship faced by the resident deductor, the CBDT has modified Circular No. 07/2007, dated 23-10-2007 to the effect that the beneficial provisions under the said Circular allowing refund of tax deducted at source
under section 195 to the person deducting tax at source shall also apply to those cases where deduction of tax at a higher rate under the relevant DTAA has been made while a lower rate is prescribed under the domestic law.

15.3.25 Non-applicability of TDS provisions on payments made to Corporations whose income is exempt under section 10(26BBB) [Circular No.7/2015, dated 23-04-2015]

The CBDT had earlier issued Circular No.4/2002 dated 16.07.2002 which laid down that there would be no requirement for tax deduction at source in respect of payments made to such entities, whose income is unconditionally exempt under section 10 of the Income-tax Act, 1961 and who are statutorily not required to file return of income as per the section 139. The said Circular also lists the entities which are unconditionally exempt under section 10 and who are statutorily not required to file return of income as per section 139.

Subsequently, section 10(26BBB) was inserted in the Income-tax Act, 1961 vide Finance Act, 2003 w.e.f. 1.4.2004 to provide that any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-service-men being the citizens of India does not form part of the total income. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per the section 139.

The corporations covered under section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e., such corporations are statutorily not required to file return of income as per section 139 and their income is also unconditionally exempt under section 10 of the Income-tax Act, 1961. Accordingly, the CBDT has examined the matter and extended the benefit of the said Circular to such corporations whose income is exempt under section 10(26BBB). Hence, there would be no requirement for tax deduction at source from the payments made to such corporations, since their income is anyway exempt under the Income-tax Act, 1961.

15.3.26 Income payable net of tax [Section 195A]

(1) Where, under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon, be equal to the net amount payable under such agreement or arrangement.

(2) However, no grossing up is required in the case of tax paid [under section 192(1A)] by an employer on the non-monetary perquisites provided to the employee.

Illustration 19

‘X’ while making payment "net of tax" to a non-resident for providing technical services on a World Bank aided project had deducted tax out of such payments as per rates prescribed but says that the payee is not entitled for the TDS certificate. Examine.

Solution

As per section 198, any sum deducted in accordance with the provisions of Chapter
XVII-B of the Income-tax Act, 1961 is deemed to be income received while computing the income of the payee.

As per section 203, every person deducting tax at source shall furnish to the payee a certificate in the prescribed form within the prescribed time.

Even in a case where ‘X’ undertakes to pay the tax on the grossed up amount, the non-resident shall be entitled for issue of certificate for tax deducted at source in respect of payment made ‘net of tax’ in terms of section 195A. This has been clarified vide CBDT Circular No.785 dated 24.11.1999.

Therefore, X has a legal obligation to issue TDS certificate to the non-resident, even if he has made payment of income “net of tax” to him.

**15.3.27 Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations [Section 196]**

(1) No deduction of tax shall be made by any person from any sums payable to -

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or

(iv) a Mutual Fund specified under section 10(23D).

(2) This provision for non-deduction is when such sum is payable to the above entities by way of -

(i) interest or dividend in respect of securities or shares -

   (a) owned by the above entities; or
   
   (b) in which they have full beneficial interest or

(ii) any income accruing or arising to them.

**15.4 CERTIFICATE FOR DEDUCTION OF TAX AT A LOWER RATE [SECTION 197]**

(1) This section applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be at the rates in force as per the provisions of sections 192, 193,194,194A, 194C, 194D, 194G, 194H, 194-I, 194J 194K, 194LA, 194LBB, 194LBC and 195.

(2) In such cases, the assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.

(3) If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, he may give to the assessee such certificate, as may be appropriate.
Where the Assessing Officer issues such a certificate, then the person responsible for paying the income shall deduct income-tax at such lower rates specified in the certificate or deduct no tax, as the case may be, until such certificate is cancelled by the Assessing Officer.

Enabling powers have been conferred upon the CBDT to make rules for prescribing the procedure in this regard.

15.5 NO DEDUCTION IN CERTAIN CASES [SECTION 197A]

(1) Enabling provision for filing of declaration for receipt of dividend and NSS payment without deduction of tax [Sub-section (1)]

(i) This section enables an individual, who is resident in India and whose estimated total income of the previous year is less than the basic exemption limit, to receive dividends and any sum out of National Savings Scheme Account, without deduction of tax at source under sections 194 and 194EE, on furnishing a declaration in duplicate in the prescribed form and verified in the prescribed manner.

(ii) The declaration in the above form is to be furnished in writing in duplicate by the declarant to the person responsible for paying any income of the nature referred to in sections 194 or 194EE. The declaration will have to be to the effect that the tax on the estimated total income of the declarant of the previous year in which such income is to be included in computing his total income will be Nil.

(2) Enabling provision for filing of declaration for non-deduction of tax under section 192A or 193 or 194A or 194D or 194DA or 194-I by persons, other than companies and firms [Sub-section (1A)]

No deduction of tax shall be made under the above provisions of the Act, where a person, who is not a company or a firm, furnishes to the person responsible for paying any income of the nature referred to in these sections, a declaration in writing in duplicate in the prescribed form to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be Nil.

(3) Filing declaration not permissible if income/aggregate of incomes exceed basic exemption limit [Sub-section (1B)]

Declaration cannot be furnished as per the above provisions, where -

(i) the amount of any income from dividends; or
(ii) payments in respect of deposits under National Savings Schemes, etc.; or
(iii) payment of premature withdrawal from Employee Provident Fund; or
(iv) income from interest on securities or interest other than “interest on securities” or units; or
(v) insurance commission; or
(vi) payment in respect of life insurance policy; or
(vii) rent; or
(viii) the aggregate of the amounts of such incomes in (i) to (vii) above credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the basic exemption limit.

(4) **Enabling provision for filing of declaration by resident senior citizens for non-deduction of tax at source [Sub-section (1C)]**

For a resident senior citizen, who is of the age of 60 years or more at any time during the previous year, no deduction of tax shall be made under section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I, if such individual furnishes a declaration in writing in duplicate to the payer, that tax on his estimated total income of the previous year in which such income is to be included in computing his total income is **Nil**. The restriction contained in sub-section (1B) will not apply to resident senior citizens.

(5) **Non-deduction of tax in certain cases**

(i) **Interest payments by an Offshore Banking Unit to a non-resident/not ordinarily resident in India [Sub-section (1D)]**

No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on -

(a) deposit made by a non-resident/not-ordinarily resident on or after 1.4.2005; or
(b) borrowing from a non-resident/not-ordinarily resident on or after 1.4.2005.

<table>
<thead>
<tr>
<th>Applicability of section 197A(1D) and section 10(15)(viii) to interest paid by IFSC Banking Units (IBUs) [Circular No 26/2016 dated 4.7.2016]</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CBDT Circular clarifies that in accordance with the provisions of section 197A(1D), tax is not required to be deducted on interest paid by IFSC Banking Units, on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.</td>
</tr>
</tbody>
</table>

(ii) **Payment to any person for, or on behalf of, the NPS Trust [Sub-section (1E)]**

No deduction of tax at source shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred in section 10(44).

(iii) **Specified payments to notified institutions/class of institutions etc. [Sub-section (1F)]**

No deduction of tax shall be made from specified payments to such institution, association or body or class of institutions or associations or bodies as may be notified
by the Central Government in the Official Gazette in this behalf. Therefore, in respect of such specified payments made to notified bodies, no tax is to be deducted at source.

Accordingly, the Central Government has notified that no deduction of tax shall be made from the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank or to any payment systems company authorised by the Reserve Bank of India under section 4(2) of the Payment and Settlement Systems Act, 2007–

(a) bank guarantee commission,

(b) cash management service charges,

(c) depository charges on maintenance of DEMAT accounts,

(d) charges for warehousing services for commodities,

(e) underwriting service charges,

(f) clearing charges (MICR charges) including interchange fee or any other similar charges, by whatever name called, charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007 and

(g) credit card or debit card commission for transaction between the merchant establishment and acquirer bank,

(6) **Time limit for delivery of one copy of declaration [Sub-section (2)]**

On receipt of the declaration referred to in sub-sections (1), (1A) or (1C), the person responsible for making the payment will be required to deliver or cause to be delivered to the Chief Commissioner or Commissioner, one copy of the declaration **on or before the 7th of the month following the month in which the declaration is furnished** to him.

**15.6 MISCELLANEOUS PROVISIONS**

**15.6.1 Tax deducted is income received [Section 198]**

(1) All sums deducted in accordance with the foregoing provisions shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(2) However, the tax paid by an employer under sub-section (1A) of section 192 on non-monetary perquisites provided to the employees, shall not be deemed to be income received by the assessee.

**15.6.2 Credit for tax deducted at source [Section 199]**

(1) Tax deducted at source in accordance with the above provisions and paid to the credit of the
Central Government shall be treated as payment of tax on behalf of the-

(i) person from whose income the deduction was made; or

(ii) owner of the security; or

(iii) depositor; or

(iv) owner of property; or

(v) unit-holder; or

(vi) shareholder.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government, shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made.

(3) The CBDT is empowered to frame rules for the purpose of giving credit in respect of tax deducted or tax paid under Chapter XVII. The CBDT also has the power to make rules for giving credit to a person other than the persons mentioned in (1) and (2) above. Further, the CBDT can specify the assessment year for which such credit may be given.

(4) **Rule 37BA – Credit for tax deducted at source for the purposes of section 199**

Rule 37BA(1) provides that credit for tax deducted at source and paid to the Central Government shall be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

Clause (i) of Rule 37BA(2) provides that where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee.

However, the deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1) of Rule 37BA.

**15.6.3 Duty of person deducting tax [Section 200]**

(1) The persons responsible for deducting the tax at source should deposit the sum so deducted to the credit of the Central Government within the prescribed time [Sub-section (1)].

(2) Further, an employer paying tax on non-monetary perquisites provided to employees in accordance with section 192(1A), should deposit within the prescribed time, the tax to the credit of the Central Government or as the Board directs [Sub-section (2)].
Rule 30 – Prescribed time and mode of payment to Government account of TDS or tax paid under section 192(1A)

(a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.

(b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).

(c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

(d) Tax deducted under sections 194-IA and 194-IB have to be remitted within 30 days from the end of the month of deduction. A challan-cum-statement in Form 26QB/26QC has to be furnished within 30 days from the end of the month of deduction.

(3) For the purpose of improving the reporting of payment of TDS made through book entry and to make existing mechanism enforceable, sub-section (2A) has been inserted in section 200. Accordingly, where the tax deducted or tax referred to in section 192(1A) has been paid without the production of a challan, the PAO/TO/CDDO or any other person, by whatever name called, who is responsible for crediting such sum to the credit of the Central Government, shall deliver or cause to be delivered within the prescribed time a statement in the prescribed form, verified in the prescribed manner and setting forth prescribed particulars to the prescribed income-tax authority or the person authorised by such authority [Sub-section (2A)].

(4) Sub-section (3) casts responsibility on the following persons –

(i) any person deducting any sum on or after 1st April, 2005 in accordance with the foregoing provisions of this chapter; or,

(ii) any person being an employer referred to in section 192(1A).

(5) These persons are responsible for preparing such statements for such periods as may be prescribed, after paying the tax deducted to the credit of the Central Government within the prescribed time.
(6) Such statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorised by such authority.

(7) Such statements should be in the prescribed form and verified in the prescribed manner.

(8) It should set forth such particulars and should be delivered within such time as may be prescribed.

(9) The deductor may also deliver to the prescribed authority, a correction statement -
   (a) for rectification of any mistake; or
   (b) to add, delete or update the information furnished in the statement delivered under section 200(3).

(10) Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, the following quarterly statements to the DGIT (Systems) or any person authorized by him, in accordance with section 200(3):
   (i) Statement of TDS under section 192 in Form No.24Q;
   (ii) Statement of TDS under sections 193 to 196D in Form No.26Q in respect of all deductees other than a deductee being a non-corporate non-resident or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No.27Q.

**Rule 31A - Time limit for submission of quarterly statements**

Rule 31A requires every person responsible for deduction of tax under Chapter XVII-B to deliver, or cause to be delivered, quarterly statements to the Director General of Income-tax (Systems) or the person authorised by him within the due date for each quarter specified in Rule 31A(2). Rule 31A(2) prescribed differential due dates for Government deductors and other deductors. In order to ensure equity and give more time for other deductors, common due dates are now prescribed thereunder for Government deductors and other deductors. Accordingly, quarterly statements of TDS have to be furnished by the due dates specified in column (3) against the corresponding quarter –

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Date of ending of the quarter of the financial year</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>30th June</td>
<td>31st July of the financial year</td>
</tr>
<tr>
<td>2.</td>
<td>30th September</td>
<td>31st October of the financial year</td>
</tr>
<tr>
<td>3.</td>
<td>31st December</td>
<td>31st January of the financial year</td>
</tr>
<tr>
<td>4.</td>
<td>31st March</td>
<td>31st May of the financial year immediately following the financial year in which the deduction is made.</td>
</tr>
</tbody>
</table>
Deduction of tax at source


Deduct tax at the time of credit to the a/c of the payee or payment, whichever is earlier

Remittance [Rule 30]

Other deductors

Where tax is paid without production of challan

On the same day

PAO/TO/CDDO

Submit Statement in Form 24G to agency authorised by PDIT (Sys)

Where Slt relates to March

On or before 30th April

Furnishing Slt of TDS [Rule 31A] [Form 24Q/26Q/27Q]

Qtr ending Due date
30th June 31st July
30th Sep 31st Oct
31st Dec 31st Jan
31st March 31st May

Rule 31A - Furnish Challan-cum-slt in Form 26OB/26QC with 30 days from the end of the month of deduction

Where Slt relates to other months

On or before 15 days from the end of the relevant month

Furnishing Certificate of TDS [Rule 31]

Deduction u/s 192
Form 16
By 15th June of the immediately following F.Y.

Deduction under other sections
Form 16A
Within 15 days from the due date for furnishing TDS statement

Rule 31AB - DGIT (Sys) to deliver slt of TDS in Form 26AS to the deductee by 31st July of following year

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15.6.4 Correction of arithmetic mistakes and adjustment of incorrect claim during computerized processing of TDS statements [Section 200A]

(1) At present, all statements of tax deducted at source are filed in an electronic mode, thereby facilitating computerised processing of these statements. Therefore, in order to process TDS statements on computer, electronic processing on the same lines as processing of income-tax returns has been provided in section 200A.

(2) The following adjustments can be made during the computerized processing of statement of tax deducted at source or a correction statement –

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the statement.

(3) The term "an incorrect claim apparent from any information in the statement" shall mean such claim on the basis of an entry, in the statement, –

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of the Act.

(4) The interest, if any, has to be computed on the basis of the sums deductible as computed in the statement;

(5) The fee, if any, has to be computed in accordance with the provision of section 234E.

(6) The sum payable by, or the amount of refund due to, the deductor has to be determined after adjustment of interest and fee against the amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee.

(7) An intimation will be prepared and generated and sent to the deductor, specifying his tax liability or the refund due, within one year from the end of the financial year in which the statement is filed. The refund due shall be granted to the deductor.

For this purpose, the CBDT is empowered to make a scheme for centralized processing of statements of TDS to determine the tax payable by, or refund due to, the deductor.

15.6.5 Consequences of failure to deduct or pay [Section 201]

(1) **Deemed assessee-in-default**

The following persons shall be deemed to be an assessee in default if they do not deduct the whole or any part of the tax or after deducting fails to pay the tax -
(i) any person including the principal officer of a company, who is required to deduct any sum in accordance with the provisions of the Act; and

(ii) an employer paying tax on non-monetary perquisites under section 192(1A).

(2) **Non-applicability of deeming provision**

Any person (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 –

(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.

(3) **No penalty under section 221**

No penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that such person has failed to deduct and pay the tax without good and sufficient reasons.

(4) **Interest Liability**

(i) A person deemed to be an assessee-in-default under section 201(1), for failure to deduct tax or to pay the tax after deduction, is liable to pay simple interest @1% for every month or part of month on the amount of such tax from the date on which tax was deductible to the date on which such tax was actually deducted and simple interest @1½% for every month or part of month from the date on which tax was deducted to the date on which such tax is actually paid [Section 201(1A)].

**Illustration 20**

An amount of ₹ 40,000 was paid to Mr. X on 1.7.2017 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 25.2.2018, from which tax@10% (amounting to ₹ 9,000) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 9,000 was deposited only on 22.6.2018. Compute the interest chargeable under section 201(1A).

**Solution**

Interest under section 201(1A) would be computed as follows –

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1% on tax deductible but not deducted i.e., 1% on ₹ 4,000 for 8 months</td>
<td>320</td>
</tr>
</tbody>
</table>
DEDUCTION, COLLECTION AND RECOVERY OF TAX 15.61

<table>
<thead>
<tr>
<th>1½% on tax deducted but not deposited i.e. 1½% on ₹ 9,000 for 4 months</th>
<th>540</th>
</tr>
</thead>
<tbody>
<tr>
<td>860</td>
<td></td>
</tr>
</tbody>
</table>

(ii) Such interest should be paid before furnishing the statements in accordance with section 200(3).

(iii) 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) on account of payment of taxes by such resident payee, 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. 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.

(iv) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the person or the company, as the case may be.

(5) **Time limit for deeming a person to be an assessee-in-default for failure to deduct tax at source**

No order under section 201(1), deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India, shall be passed at any time after the expiry of seven years from the end of the financial year in which the payment is made or credit is given.

Further, the exclusions from the time limit, as specified in *Explanation 1* to section 153, would also apply to the above time limit for passing an order deeming a person to be an assessee-in-default. Also, the time limit would not apply to an order passed consequent to the direction contained in an order of the Commissioner under sections 263 and 264, Commissioner (Appeals) under section 250, Appellate Tribunal under section 254, Supreme Court/National Tax Tribunal under section 260 and Supreme Court under section 262. Thus, the time limit would be extended where effect is to be given to various appellate proceedings or where proceedings are stayed.

(6) **Non-specification of time limit where tax has been deducted but not paid**

Section 201(1) deems a person to be an assessee-in-default if he –

(i) does not deduct tax; or

(ii) does not pay; or

(iii) after so deducting fails to pay

the whole or any part of the tax, as required by or under this Act.
Thus, section 201(1) contemplates three types of defaults. The default contemplated in (ii) is covered by the default contemplated in (iii). However, the time limit has been specified only for passing of orders relating to default contemplated in (i) above. There is no time limit specified in respect of the other defaults.

Therefore, no time-limits have been prescribed for the order under section 201(1) where –

(i) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,

(ii) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,

(iii) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

15.6.6 Deduction only one mode of recovery [Section 202]

(1) Recovery of tax through deduction at source is only one method of recovery.

(2) The Assessing Officer can use any other prescribed methods of recovery in addition to tax deducted at source.

15.6.7 Certificate for tax deducted [Section 203]

(1) Every person deducting tax at source shall issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.

(2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

(3) Certificate of TDS to be furnished under section 203 [Rule 31]

The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No.16 in respect of tax deducted or paid under section 192 and in any other case, Form No.16A.

Form No.16 shall be issued to the employee annually by 15th June of the financial year immediately following the financial year in which the income was paid and tax deducted. Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

15.6.8 Common number for TDS and TCS [Section 203A]

(1) Persons responsible for deducting tax or collecting tax at source should apply to the Assessing Officer for the allotment of a “tax-deduction and collection-account number”.

(2) Section 203A(2) enlists the documents/certificates/returns/challans in which the “tax deduction account number” or “tax collection account number” or “tax deduction and
collection account number” has to be compulsorily quoted. They are -

(i) challans for payment of any sum in accordance with the provisions of section 200 or section 206C(3);

(ii) certificates furnished under section 203 or section 206C(5);

(iii) statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) or section 206C(3);

(iv) returns delivered in accordance with the provisions of section 206 or section 206C(5A)/(5B); and

(v) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

(3) The requirement of obtaining and quoting of TAN under section 203A shall not apply to such person, as may be notified by the Central Government in this behalf.

15.6.9 Furnishing of statement of tax deducted [Section 203AA]

(1) This section provides for furnishing of a statement of the tax deducted on or after 1st April, 2008 by the prescribed income-tax authority or the person authorised by such authority referred to in section 200(3)

(2) Such statement should be prepared and delivered to every person -

(a) from whose income, tax has been deducted or

(b) in respect of whose income, tax has been paid.

(3) Such statement should be in the prescribed form specifying the amount of tax deducted or paid and other prescribed particulars.

(4) Accordingly, the DGIT (Systems) has to deliver statement of TDS in Form 26AS by 31st July the following year.

15.6.10 Person responsible for paying taxes deducted at source [Section 204]

For purposes of deduction of tax at source the expression “person responsible for paying” means:

<table>
<thead>
<tr>
<th>Nature of income/payment</th>
<th>Person responsible for paying tax</th>
</tr>
</thead>
</table>
| (1) Salary (other than payment of salaries by the Central or State Government) | (i) the employer himself; or  
(ii) if the employer is a company, the company itself, including the principal officer thereof. |
<p>| (2) Interest on securities (other than payments by or on behalf of the Central or State Government) | the local authority, corporation or company, including the principal officer thereof. |
| (3) Any sum payable to a non- | the “Authorised Person” responsible for remitting |</p>
<table>
<thead>
<tr>
<th>15.64 DIRECT TAX LAWS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>resident Indian, representing consideration for the transfer by him of any foreign exchange asset, which is not a short term capital asset</td>
<td>such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Management Act, 1999 and any rules made thereunder.</td>
</tr>
</tbody>
</table>
| (4) furnishing of information relating to payment to a non corporate non-resident, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act | (i) the payer himself; or  
(ii) if the payer is a company, the company itself including the principal officer thereof. |
| (5) Credit/payment of any other sum chargeable under the provisions of the Act | (i) the payer himself; or  
(ii) if the payer is a company, the company itself including the principal officer thereof. |
| (6) Credit/payment of any sum chargeable under the provisions of the Act made by or on behalf of the Central Government or the Government of a State. | (i) the drawing and disbursing officer; or  
(ii) any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum. |

15.6.11 Bar against direct demand on assessee [Section 205]

Where tax is deductible at source under any of the aforesaid sections, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

15.6.12 Furnishing of statements in respect of payment of interest to residents without deduction of tax [Section 206A]

(1) This section casts responsibility on every banking company or co-operative society or public company referred to in the proviso to section 194A(3)(i) to prepare such statements for such period as may be prescribed –

— if they are responsible for paying to a resident,

— the payment should be of any income not exceeding ₹ 10,000, where the payer is a banking company or a co-operative society, and ₹ 5,000 in any other case.

— such income should be by way of interest (other than interest on securities)

(2) The statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorised by such authority.

(3) The statements have to be in the prescribed form, verified in the prescribed manner and to be filed within the prescribed time, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.
(4) The Central Government may, by notification in the Official Gazette, cast responsibility on any person other than a person mentioned in (1) above.

(5) Such persons would be persons responsible for paying to a resident any income liable for deduction of tax at source.

(6) Such persons are vested with the responsibility to prepare and deliver or cause to be delivered statements within the prescribed time to the prescribed income-tax authority or the person authorized by such authority.

(7) Such statements should be in the prescribed form and verified in the prescribed manner.

(8) Such statements should be on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

15.6.13 Mandatory requirement of furnishing PAN in all TDS statements, bills, vouchers and correspondence between deductor and deductee [Section 206AA]

(1) on account of problems in the processing of returns of income and in granting credit for tax deducted at source.

(2) With a view to strengthening the PAN mechanism, section 206AA provides that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –

(i) the rate prescribed in the Act;

(ii) at the rate in force i.e., the rate mentioned in the Finance Act; or

(iii) at the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I. However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 194B. Therefore, wherever tax is deductible at a rate higher than 20%, this provision would not have any impact.

(3) Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.

(4) Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

(5) If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be
deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified in (ii) above.

(6) The provisions of section 206AA shall not apply in respect of payment of interest on long-term bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.

(7) **Non-applicability of section 206AA to non-residents subject to fulfilment of certain conditions:**

For the purpose of reducing the compliance burden, section 206AA provides for non-applicability of the requirements contained therein to a non-corporate non-resident in respect of any other payment subject to the deductee furnish the following details and documents to the deductor, namely:-

   a. name, e-mail id, contact number;

   b. address in the country or specified territory outside India of which the deductee is a resident;

   c. a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;

   d. Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident. **[Notification No. 53/2016 dated 24th June, 2016]**

(8) Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

### 15.7 TAX COLLECTION AT SOURCE [SECTION 206C]

(1) **Applicability and Rate [Section 206C(1)/(1C)/(1F)]**

(i) Under section 206C(1), sellers of certain goods are required to collect tax from the buyers at the specified rates. The specified percentage for collection of tax at source is as follows:

<table>
<thead>
<tr>
<th>Nature of Goods</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Alcoholic liquor for human consumption</td>
<td>1%</td>
</tr>
<tr>
<td>(ii) Tendu leaves</td>
<td>5%</td>
</tr>
<tr>
<td>(iii) Timber obtained under a forest lease</td>
<td>2.5%</td>
</tr>
<tr>
<td>(iv) Timber obtained by any mode other than (iii)</td>
<td>2.5%</td>
</tr>
<tr>
<td>(v) Any other forest produce not being timber or tendu leaves</td>
<td>2.5%</td>
</tr>
</tbody>
</table>
(vi) Scrap 1%
(vii) Minerals, being coal or lignite or iron ore 1%

(ii) Section 206C(1C) provides for collection of tax by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any -

- parking lot or
- toll plaza or
- a mine or a quarry

to another person (other than a public sector company) for the use of such parking lot or toll plaza or mine or quarry for the purposes of business. The tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, at the rate of 2%.

Note – Mining and quarrying excludes mining and quarrying of mineral oil. Mineral oil includes petroleum and natural gas. Thus, mining and quarrying excludes mining and quarrying of petroleum and natural gas. Consequently, the oil exploration and incidental services are relieved from the applicability of TCS provisions, since these services are in the organized sector.

(iii) Section 206C(IF) provides that every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, shall collect tax from the buyer@1% of the sale consideration.

Note - The power to recover tax by collection under sub-section (1) or (1C) shall be without prejudice to any other mode of recovery [Sub-section (2)].

(2) Meaning of certain terms [Explanation to section 206C]

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
</table>
| (i) Buyer | For sub-section (1) and (1C) of section 206C:  
A person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include –  
(A) a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club, or  
(B) a buyer in the retail sale of such goods purchased by him for personal consumption |
For sub-section (1F) of section 206C:
A person who obtains in any sale, goods of the nature specified therein, but does not include –
(A) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
(B) a local authority as defined in Explanation to section 10(20); or
(C) a public sector company which is engaged in the business of carrying passengers.

| (ii) Seller | (i) The Central Government, (ii) a State Government or (iii) any local authority or (iv) corporation or (v) authority established by or under a Central, State or Provincial Act, or (vi) any company or (vii) firm or (viii) co-operative society Seller also includes an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in sub-section (1) are sold. |
| (iii) Scrap | Waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons; |

(3) **CBDT Clarification relating to certain issues with respect to section 206C(1F)**

These amendments in section 206C have given rise to certain issues relating to the scope and applicability of the provisions. Accordingly, the CBDT has, vide Circular No. 22/2016 dated 8.6.2016 and Circular No.23/2016 dated 24.6.2016, clarified the following issues in “Question & Answer (Q&A)” format.

Q.1 Whether TCS@1% is on sale of motor vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors?

A. To bring high value transactions within the tax net, section 206C has been amended
to provide that the seller shall collect the tax @ 1% from the purchaser on sale of motor vehicle of the value exceeding ₹ 10 lakhs. This is brought to cover all transactions of retail sales and accordingly, it will not apply on sale of motor vehicles by manufacturers to dealers/distributors.

**Q.2 Whether TCS@1% on sale of motor vehicle is applicable only to luxury cars?**
A. No, as per section 206C(1F), the seller shall collect tax@1% from the purchaser on sale of any motor vehicle of the value exceeding ₹ 10 lakhs.

**Q.3 Whether TCS@1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?**
A. Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State shall not be liable to levy of TCS@1% under sub-section (IF) of section 206C.

**Q.4 Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?**
A. Tax is to be collected at source@1% on sale consideration of a motor vehicle exceeding ₹ 10 lakhs. It is applicable to each sale and not to aggregate value of sale made during the year.

**Q.5 Whether TCS@1% on sale of motor vehicle is applicable in case of an individual?**
A. The definition of “Seller” as given in clause (c) of the Explanation below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also. Accordingly, an individual who is liable to audit as per the provisions of section 44AB during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

**Q.6 How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?**
A. The provisions of TCS on sale of motor vehicle exceeding ₹ 10 lakhs is not dependent on mode of payment. Any sale of motor vehicle exceeding ₹ 10 lakhs would attract TCS@1%.

(4) **Time of Collection of tax [Section 206C(1)/(1C)/(1F)]**

The tax should be collected at the time of debiting of the amount payable by the buyer or licensee or lessee, as the case may be, to his account or at the time of receipt of such
amount from the buyer or licensee or lessee, as the case may be, in cash or by the issue of a cheque or draft or any other made, whichever is earlier.

In case of sale of a motor vehicle of the value exceeding ₹ 10 lakhs, tax shall be collected at the time of receipt of such amount.

(5) **Non-applicability of TCS [Section 206C(1A)]**

No collection of tax shall be made in the case of a resident buyer, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that goods referred to in column (2) of the Table in (1)(i) above are to be utilised for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

(6) **Furnishing of copy of declaration within specified time [Section 206C(1B)]**

The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before 7th of the month next following the month in which the declaration is furnished to him.

(7) **TCS to be paid within prescribed time [Section 206C(3)]**

Any amount collected under sub-section (1) or (1C) shall be paid within the prescribed time to the credit of the Central Government or as the Board directs.

**Time limit for paying tax collected to the credit of the Central Government [Rule 37CA]**

<table>
<thead>
<tr>
<th>Person collecting sums in accordance with section 206C(1)/(1C)</th>
<th>Circumstance</th>
<th>Period within which such sum should be paid to the credit of the Central Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) An office of the Government</td>
<td>(i) where the tax is paid without production of an income-tax challan</td>
<td>on the same day</td>
</tr>
<tr>
<td></td>
<td>(ii) where tax is paid accompanied by an income-tax challan</td>
<td>on or before 7 days from the end of the month in which the collection is made</td>
</tr>
<tr>
<td>(2) Collectors other than an office of the Government</td>
<td></td>
<td>within one week from the last day of the month in which the collection is made</td>
</tr>
</tbody>
</table>

(8) **Statement of TCS to be prepared and delivered within prescribed time**

(i) A person collecting tax in accordance with the provisions of the section is vested with the
responsibility of preparing such statements for such periods as may be prescribed after paying the tax collected to the credit of the Central Government within the prescribed time.

(ii) The statement should be delivered or caused to be delivered to the prescribed income-tax authority, i.e., DGIT (Systems) or the person authorised by such authority.

(iii) The statement should be in the prescribed form [Form No.27EQ] and verified in the prescribed manner.

(iv) The statement should set forth the prescribed particulars and should be filed within such time as may be prescribed. The time limit for furnishing such quarterly statements shall be 15th of the month following each quarter in respect of the first three quarters and 15th May for the last quarter ending on 31st March.

<table>
<thead>
<tr>
<th>Due dates for furnishing statement of TCS [Rule 31AA]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarter ending</td>
</tr>
<tr>
<td>I</td>
</tr>
<tr>
<td>II</td>
</tr>
<tr>
<td>III</td>
</tr>
<tr>
<td>IV</td>
</tr>
</tbody>
</table>

(9) **Enabling provision for improving the reporting of payment of TCS made through book entry and making the existing mechanism enforceable [Section 206C(3A)]**

Where the tax collected has been paid without the production of a challan, the PAO/TO/CDDO or any other person, by whatever name called, who is responsible for crediting such sum to the credit of the Central Government, shall furnish a statement in the prescribed form [Form No.24G] for the prescribed period to the agency authorised by the Principal Director of Income-tax (Systems) in respect of tax collected by the collectors and reported to him. Such statement has to be furnished within the prescribed time by verifying the same in the prescribed manner and setting forth prescribed particulars.

<table>
<thead>
<tr>
<th>Relevant Rule</th>
<th>Period to which statement relates</th>
<th>Prescribed Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>37CA(3A)(a)</td>
<td>Where the statement relates to the month of March</td>
<td>On or before 30th April</td>
</tr>
<tr>
<td>37CA(3A)(b)</td>
<td>In any other case</td>
<td>On or before 15 days from the end of the relevant month</td>
</tr>
</tbody>
</table>

Such statement has to be furnished in the following manner:

(a) electronically under digital signature; or
(b) electronically along with verification of the statement in Form No.27A or verified through an electronic process

in accordance with the procedures, formats and standards for the purpose of furnishing and verification of the statements specified by the Principal Director General of Income-tax (Systems)

(10) **Enabling provision for filing correction statement of TCS [Section 206C(3B)]**

The person collecting tax at source who is required to prepare statements to be delivered to Director General of Income-tax (Systems) / NSDL after paying the tax collected to the credit of the Central Government, may also deliver to the said authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement so delivered in the specified form and verified in the specified manner.

(11) **Credit for TCS [Sub-section (4)]**

Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be payment of tax on behalf of the person from whom the amount has been collected. The CBDT may prescribe the rules based on which credit shall be given to such person for the amount so collected in a particular assessment year.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Case</th>
<th>Manner of allowing credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 37-I(2)(i)</td>
<td>Where tax has been collected at source and paid to the Central Government</td>
<td>Credit for TCS shall be given for the A.Y. for which the income is assessable to tax.</td>
</tr>
<tr>
<td>Rule 37-I(2)(ii)</td>
<td>Where tax has been collected at source and paid to the Central Government and the lease or license is relatable to more than one year</td>
<td>Credit for TCS shall be allowed across those years to which the lease or license relates in the same proportion</td>
</tr>
</tbody>
</table>

(12) **Furnishing of Certificate of TCS within prescribed time [Sub-section (5)]**

(i) Every person collecting tax in accordance with the provisions of this section shall, within such period as may be prescribed from the date of debit or receipt of the amount, furnish to the buyer or licensee or lessee to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

(ii) Certificate of tax collected at source under section 206C(5) in Form No.27D shall be furnished by the collector within 15 days from the due date for furnishing the quarterly statement of TCS under Rule 31AA [Rule 37D].

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(iii) The prescribed income-tax authority or the person authorized by such authority have now been vested with the responsibility to prepare and deliver a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed, within the prescribed time after the end of each financial year beginning on or after 1.4.2008 [Proviso to sub-section (5)].

(iv) Accordingly, Rule 31AB requires the statement in Form 26AS to be delivered by the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems) on or before 31st July following the Financial Year during which taxes were collected or paid to:

(a) every person in respect of whose income the tax has been paid or
(b) the buyer or licencsee or lessee from whom the amount has been collected.

(13) **Consequences of failure to collect tax at source**

(i) **Personal liability to pay tax collectible at source [Section 206C(6)]** - A person who is responsible for collecting the tax in accordance with the provisions of this section shall be liable to pay the tax to the credit of the Central Government, even if he has failed to collect the tax.

(ii) **Deemed assessee-in-default for failure to collect tax [Section 206C(6A)]** - Any person responsible for collecting tax shall be deemed to be an assessee in default in respect of the tax if such person -

1. does not collect the whole or any part of the tax or
2. fails to pay such tax after having collected the tax.

(iii) **Deeming provision not applicable if tax is paid by buyer/licensee/lessee [First Proviso to section 206C(6A)]** - Any person responsible for collecting tax at source would not be deemed to be an assessee-in-default for failure to collect tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee, if such buyer or licensee or lessee has furnished his return of income under section 139, taking into account such amount for computing income and paid the tax due on the income declared by him in such return of income. Further, the person should also furnish a certificate to this effect from an accountant in the prescribed form.

(iv) **Levy of penalty for failure to collect and pay tax [Second proviso to section 206C(6A)]** - No penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.
(v) **Interest payable for failure to collect and pay tax within the prescribed time [Sub-section (7)]** - If the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of 1% p.m. 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 in accordance with the provisions of sub-section (3).

In such cases where a person is not deemed to be an assessee-in-default on account of the tax being paid by the buyer/licensee/lessee, interest shall be payable by the collector from the date on which tax was collectible to the date of furnishing return of income by such buyer or licensee or lessee.

(vi) **Tax not collected to be a charge upon all assets of the collector [Section 206C (8)]** - Where the tax has not been paid as aforesaid, after it is collected, the amount of tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

(14) **Other Provisions [Section 206C(9)/(10)/(11)]**

(i) **Certificate for collection of tax at lower rate [Section 206C(9)]** - The Assessing Officer can issue certificate for collection of tax at a lower rate than those specified in sub-section (1)/(1C). Such certificate shall be issued on an application made by the buyer or licensee or lessee in this behalf.

(ii) **Tax to be collected at the rate specified in the Certificate [Section 206C(10)]** - The person responsible for collecting tax shall collect the same at the rate specified in such certificate until such certificate is cancelled by the Assessing Officer.

(iii) **CBDT empowered to make rules relating to grant of Certificates [Section 206C(11)]** - The CBDT is empowered to make rules specifying the cases in which and the circumstances under which an application may be made for the grant of such certificate and the conditions subject to which certificate may be granted.
### Tax Collection at Source

**206C(1)**
- **Seller**
  - Alcoholic liquor: 1%
  - Tendu leaves: 5%
  - Timber: 2.5%
  - Other forest produce: 2.5%
  - Scrap: 1%
  - Minerals: 1%

**206C(1C)**
- **Lessor/Licensor**
  - Lease/license or transfer any right or interest in any parking lot/toll plaza/mine/quarry for the purpose of business: @2%

**206C(1F)**
- **Seller**
  - Consideration for sale of motor vehicle of value > ₹ 10 lakhs: @1%

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**Declaration to be furnished by resident buyer to collector in Form 27C [Rule 37C]**

**Remittance [Rule 37CA]**

**TCS by an office of the Govt.**
- Without production of IT Challan: On or before 15 days from the end of the month of collection
- With IT Challan: Within 7 days from the end of the month of collection

**TCS by Others**
- Without production of IT Challan: Within one week from the last day of the month in which collection is made
- With IT Challan: Same day

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**PAO/TO/CDDO**
- Submit Statement in Form 24G to agency authorised by PDIT (Systems)

**DGIT (Sys)**
- Qtr ended March: 15th May
- Other Qtrs: 15th July/ Oct/ Jan

Rule 37D - Certificate in Form 27D to be furnished to collectee within 15 days from above due dates

DGIT (Systems) to deliver statement of TCS to the buyer/lessee in Form 26AS by 31st July [Rule 31AB]
15.8 PROCESSING OF TCS STATEMENTS [SECTION 206CB]

(1) Section 206CB facilitates processing of statements of tax collected at source in the like manner as processing of TDS statements under section 200A.

(2) The manner of processing a statement of tax collection at source or a correction statement made by a person collecting any sum under section 206C, as provided in section 206CB(1), is as follows -

(a) **Permissible adjustments** - the sums collectible under Chapter XVII-BB shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement;

(ii) an incorrect claim, apparent from any information in the statement (i.e., a claim, on the basis of an entry, in the statement—

(1) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(2) in respect of rate of collection of tax at source, where such rate is not in accordance with the provisions of the Income-tax Act, 1961).

(b) **Interest** - The interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;

(c) **Fee** - The fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) **Determination of sum payable by, or the amount of refund due to, the collector** – Such sum shall be determined after adjustment of such interest and fee against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) **Intimation** - An intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him; and

(f) **Grant of refund** - The amount of refund due to the collector in pursuance of such determination shall be granted to the collector:

However, no intimation under section 206CB(1) shall be sent after the expiry of the period of **one year** from the end of the financial year in which the statement is filed.

(3) The CBDT is empowered to make a scheme for centralised processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under section 206CB(1).
15.9 PAN QUOTING MECHANISM IN THE TCS REGIME [NEW SECTION 206CC]

In order to strengthen the PAN mechanism new section 206CC has been inserted to provide the following:

1. **Tax collectible at higher rate if PAN not furnished [Section 206CC(1)]** - Any person paying any sum or amount, on which tax is collectible at source (collectee) shall furnish his PAN to the person responsible for collecting such tax (collector), failing which tax shall be collected at the higher of the following rates -
   
   (i) at the twice the rate mentioned in the relevant section under Chapter XVII-BB; or
   
   (ii) at the rate of five per cent.

2. **Declaration invalid if PAN not furnished** - The declaration filed under section 206C(1A) shall not be valid unless the person filing the declaration furnishes his PAN in such declaration.

   In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).

   Where the PAN provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that PAN has not been furnished to the collector.

3. **Granting of Certificate subject to furnishing of PAN** - No certificate under section 206C(9) shall be granted unless it contains the PAN of the applicant.

4. **Documents to contain PAN of the collectee** - The collectee shall furnish his PAN to the collector and both shall indicate the same in all their correspondence, bills, vouchers and other documents which are sent to each other.

5. The requirement to furnish PAN to the collector does not apply to a non-resident who does not have permanent establishment in India from the provisions of this proposed section 206CC of the Act.

15.10 ADVANCE PAYMENT OF TAX [SECTION 207 TO 219]

15.10.1 Liability for payment of advance tax

1. Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219, in respect of an assessee’s current income i.e. the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year [Section 207].

2. Under section 208, obligation to pay advance tax arises in every case where the advance tax payable is ₹ 10,000 or more.
15.78 DIRECT TAX LAWS

Note - An assessee who is liable to pay advance tax of less than ₹ 10,000 will not be saddled with interest under sections 234B and 234C for defaults in payment of advance tax. However, the consequences under section 234A regarding interest for belated filing of return would be attracted.

(3) In case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship. Therefore, in order to reduce the compliance burden on such senior citizens, exemption from payment of advance tax has now been provided to a resident individual-

(i) not having any income chargeable under the head “Profits and gains of business or profession”; and

(ii) of the age of 60 years or more.

Such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

15.10.2 Computation of advance tax

(1) An assessee has to estimate his current income and pay advance tax thereon. He need not submit any estimate or statement of income to the Assessing Officer, except where he has been served with notice by the Assessing Officer.

(2) Where an obligation to pay advance tax has arisen, the assessee shall himself compute the advance tax payable on his current income at the rates in force in the financial year and deposit the same, whether or not he has been earlier assessed to tax.

(3) In the case of a person who has been already assessed by way of a regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of the opinion that such person is liable to pay advance tax, can serve an order under section 210(3) requiring the assessee to pay advance tax.

(4) For this purpose, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income for any subsequent previous year, whichever is higher, shall be taken as the basis for computation of advance tax payable.

(5) The above order can be served by the Assessing Officer at any time during the financial year but not later than the last date of February.

(6) If, after sending the above notice, but before 1st March of the financial year, the assessee furnishes a return relating to any later previous year or an assessment is completed in respect of a later return of income, the Assessing Officer may amend the order for payment of advance tax on the basis of the computation of the income so returned or assessed.

(7) If the assessee feels that his own estimate of advance tax payable would be less than the one sent by the Assessing Officer, he can file estimate of his current income and advance tax payable thereon.
DEDUCTION, COLLECTION AND RECOVERY OF TAX

(8) Where the advance tax payable on assessee’s estimation is higher than the tax computed by the Assessing Officer, then, the advance tax shall be paid based upon such higher amount.

(9) In all cases, the tax calculated shall be reduced by the amount of tax deductible at source.

No reduction of ‘tax deductible but not deducted’ while computing advance tax liability

(i) As per the provisions of section 209, the amount of advance tax payable by a person is computed by reducing the amount of income-tax which would be deductible at source during the financial year from any income which has been taken into account in computing the total income.

(ii) Some courts have opined that in case where the payer pays any amount (on which tax is deductible at source) without deduction of tax at source, the payee shall not be liable to pay advance tax to the extent tax is deductible from such amount.

(iii) With a view to make such a person (payee) liable to pay advance tax, the proviso to section 209(1)(d) provides that the amount of tax deductible at source but not so deducted by the payer shall not be reduced from the income tax liability of the payee for determining his liability to pay advance tax.

(iv) In effect, only if tax has actually been deducted at source, the same can be reduced for computing advance tax liability of the payee. Tax deductible but not so deducted cannot be reduced for computing advance tax liability of the payee.

(v) Similarly, only if tax has actually been collected at source, the same can be reduced for computing advance tax liability of the buyer or licensee or lessee. Tax collectible but not so collected cannot be reduced for computing advance tax liability of the buyer or licensee or lessee.

(10) The amount of advance tax payable by an assessee in the financial year calculated by -

(i) the assessee himself based on his estimation of current income; or

(ii) the Assessing Officer as a result of an order under section 210(3) or amended order under section 210(4)

is subject to the provisions of section 209(2), as per which the net agricultural income has to be considered for the purpose of computing advance tax.

15.10.3 Installments of advance tax and due dates

(1) Common advance tax payment schedule for both corporates and non-corporates [other than an assessee who declares profits and gains in accordance with section 44AD(1) or section 44ADA(1)]:

<table>
<thead>
<tr>
<th>Due date of installment</th>
<th>Amount payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or before 15th June</td>
<td>Not less than 15% of advance tax liability</td>
</tr>
</tbody>
</table>
### DIRECT TAX LAWS

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or before 15th September</td>
<td>Not less than 45% of advance tax liability, as reduced by the amount, if any, paid in the earlier installment.</td>
</tr>
<tr>
<td>On or before 15th December</td>
<td>Not less than 75% of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier installment or installments.</td>
</tr>
<tr>
<td>On or before 15th March</td>
<td>The whole amount of advance tax liability as reduced by the amount or amounts, if any, paid in the earlier installment or installments.</td>
</tr>
</tbody>
</table>

**Note** - Any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year on or before 15th March.

(2) Eligible assessee computing profits on presumptive basis under section 44AD(1) or section 44ADA(1) to pay advance tax by 15th March

An eligible assessee, opting for computation of profits or gains of business on presumptive basis in respect of eligible business referred to in section 44AD(1) or for computation of profits or gains of profession on presumptive basis in respect of eligible profession referred to in section 44ADA(1), shall be required to pay advance tax of the whole amount in one installment on or before the 15th March of the financial year.

However, any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year on or before 15th March.

(3) If the last day for payment of any installment of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C would not be charged.

(4) Where advance tax is payable by virtue of the notice of demand issued under section 156 by the Assessing Officer, the whole or the appropriate part of the advance tax specified in such notice shall be payable on or before each of such due dates as fall after the date of service of notice of demand.

(5) Where the assessee does not pay any installment by the due date, he shall be deemed to be an assessee in default in respect of such installment.

### 15.11 INTEREST CHARGEABLE IN CERTAIN CASES

#### 15.11.1 Interest for defaults in furnishing return of income [Section 234A]

(1) **Rate and Period for calculation of interest** - Where the return of income for any assessment year under section 139(1) or section 139(4) or in response to a notice under section 142(1), is furnished after the due date or is not furnished, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the day immediately following the due date and,
(a) where the return is furnished after the due date, ending on that date of furnishing the return; and

(b) where no return has been furnished, ending on the date of completion of assessment under section 144.

The interest payable under this section shall be reduced by the interest paid under section 140A.

Note - ‘Due date’ means the date specified in section 139(1) as applicable in the case of the assessee.

(2) **Amount on which interest is payable** - The amount on which interest will be payable will be the amount of the tax on the total income as determined under section 143(1) or on regular assessment, as reduced by the amount of -

(i) advance tax, if any, paid;

(ii) any tax deducted or collected at source;

(iii) any relief of tax allowed under section 90 or 90A;

(iv) any deduction of tax allowed under section 91;

(v) any tax credit allowed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

Note - (i) The tax on total income as determined under section 143(1) shall not include additional income-tax payable under section 143.

(ii) Where in relation to an assessment year an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as regular assessment for the purposes of this section.

(3) **Computation of interest where return is furnished after the time period specified in notice under section 148 or 153A** - Where the return of income for any assessment year, required by a notice under section 148 issued after the determination of income under section 143(1) or after completion of assessment under section 143(3) or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the date immediately following the expiry of the time allowed as aforesaid and ending on the following dates specified in column (3) below:

<table>
<thead>
<tr>
<th>Case</th>
<th>Ending date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>on the date of furnishing the return</td>
</tr>
<tr>
<td>(ii)</td>
<td>on the date of completion of the reassessment or re-computation under section 147 or reassessment under section 153A</td>
</tr>
</tbody>
</table>
(4) **Amount on which interest is payable** - The amount on which the above interest is payable is the amount by which the tax on the total income determined on the basis of such reassessment or re-computation exceeds the tax on the total income determined under section 143(1) or on the basis of the earlier assessment aforesaid.

(5) **Consequence where interest is increased or reduced subsequently as a result of rectification, appeal, revision etc.** - Where as a result of an order of rectification or appellate order or an order of revision or an order of the Settlement Commission, the interest payable is reduced or increased, the Assessing Officer shall proceed as follows:

<table>
<thead>
<tr>
<th>Case</th>
<th>Ending date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where the interest is increased</td>
<td>The Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such demand notice shall be a notice under section 156.</td>
</tr>
<tr>
<td>(ii) Where interest is reduced</td>
<td>The excess paid shall be refunded</td>
</tr>
</tbody>
</table>

(6) **Interest under section 234A not chargeable on self assessment tax paid before the due date of filing of return of income** [*Circular No. 2/2015, dated 10-2-2015*]

The Hon'ble Supreme Court has, in the case of *CIT vs Prannoy Roy* (2009) 309 ITR 231, held that interest under section 234A on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the Income-tax return for the relevant assessment year.

Accordingly, the CBDT has clarified that **no interest under section 234A shall be charged on self assessment tax paid by the assessee on or before the due date of filing of return**.

### 15.11.2 Interest for defaults in payment of advance tax [Section 234B]

(1) **Rate and period of interest** - Interest under section 234B would be attracted where an assessee, who is liable to pay advance tax, fails to pay such tax or the advance tax paid is less than 90% of assessed tax. Accordingly, interest would be leviable at the rate of 1% for every month or for part of month for the following period, if the advance tax paid falls short of 90% of the ‘assessed tax’.

<table>
<thead>
<tr>
<th>Period commencing from:</th>
<th>Period ending on:</th>
</tr>
</thead>
<tbody>
<tr>
<td>the 1st April of the following F.Y. and</td>
<td>(i) Where regular assessment is not made</td>
</tr>
<tr>
<td></td>
<td>(ii) Where regular assessment is made</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount on which interest is payable:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where no advance tax is paid</td>
</tr>
<tr>
<td>(ii) Where advance tax paid falls short of 90% of assessed tax</td>
</tr>
</tbody>
</table>
(2) **Meaning of the term ‘assessed tax’**: The tax on the total income determined under section 143(1) or on regular assessment as reduced by the amount of -

(i) any tax deducted or collected at source on any income which is taken into account for calculating the total income.

(ii) any relief of tax allowed under section 90 or 90A;

(iii) any deduction of tax allowed under section 91;

(iv) any tax credit allowed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

**Notes**: (i) An assessment made for the first time under section 147 or section 153A shall be deemed to be regular assessment.

(ii) Tax on the total income determined under section 143(1) shall not include the additional income-tax, if any, payable.

(3) **Interest paid on Self-assessment**: Where before the date of determination of total income under section 143(1) or completion of regular assessment, tax is paid by the assessee under section 140A, interest shall be calculated up to the date on which the tax is so paid and reduced by the interest paid under section 140A towards interest under section 234B.

Thereafter, interest shall be calculated on the amount by which the tax paid under section 140A together with the advance tax paid falls short of the assessed tax.

(4) **Where an application under section 245C(1) for any assessment year has been made**: In such a case, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the following period:

<table>
<thead>
<tr>
<th>Period commencing from:</th>
<th>Period ending on:</th>
</tr>
</thead>
<tbody>
<tr>
<td>the 1st April of such assessment year</td>
<td>and</td>
</tr>
</tbody>
</table>

Amount on which interest is payable:

the additional amount of income-tax referred to in section 245C(1)

Further, where as a result of an order of the Settlement Commission under section 245D(4) for any assessment year, the amount of total income disclosed in the application under section 245C(1) is increased, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the following period –
Period commencing from:  
the 1st April of such assessment year  
and  
Period ending on:  
the date of order under section 245D(4)  

<table>
<thead>
<tr>
<th>Amount on which interest is payable:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on total income determined on the basis of order under section 245D(4) minus Tax on total income disclosed in the application filed under section 245C(1).</td>
<td></td>
</tr>
</tbody>
</table>

If, as a consequence of an order passed by the Settlement Commission under section 245D(6B) to rectify a mistake apparent from the record, the amount on which interest is payable is increased or decreased, the interest shall be increased or decreased accordingly.

(5) **Where total income is increased on reassessment under section 147 or section 153A:**  
As per section 234B(3), where the total income is increased on reassessment under section 147 or section 153A, the assessee shall be liable for interest@1% for every month or part of a month on the amount of the increase in tax on total income as a consequence of reassessment or recomputation [Tax on total income determined on the basis of reassessment or recomputation – Tax on total income determined under section 143(1) or on the basis of regular assessment].

**Period for which interest is payable**

<table>
<thead>
<tr>
<th>Period commencing from:</th>
<th>Period ending on:</th>
</tr>
</thead>
<tbody>
<tr>
<td>the 1st April next following the financial year</td>
<td>the date of reassessment or recomputation under section 147 or section 153A.</td>
</tr>
</tbody>
</table>

(6) **Consequence where interest payable is increased or reduced subsequently as a result of rectification, appeal, revision etc.** - Where as a result of an appellate order or an order of revision, the interest payable is reduced or increased, the Assessing Officer shall proceed as follows:

<table>
<thead>
<tr>
<th>Case</th>
<th>Ending date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where the interest is increased</td>
<td>The Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such demand notice shall be a notice under section 156.</td>
</tr>
<tr>
<td>(ii) Where interest is reduced</td>
<td>The excess paid shall be refunded</td>
</tr>
</tbody>
</table>
15.11.3 Interest for deferment of advance tax [Section 234C]

(1) Manner of computation of interest under section 234C for deferment of advance tax by corporate and non-corporate assesses:

*In case an assessee, other than an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1), who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by such assessee on its current income on or before the dates specified in column (1) is less than the specified percentage [given in column (2)] of tax due on returned income, then simple interest@1% per month for the period specified in column (4) on the amount of shortfall, as per column (3) is leviable under section 234C.*

<table>
<thead>
<tr>
<th>Specified date</th>
<th>Specified %</th>
<th>Shortfall in advance tax</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>15th June</td>
<td>15%</td>
<td>15% of tax due on returned income (-) advance tax paid up to 15th June</td>
<td>3 months</td>
</tr>
<tr>
<td>15th September</td>
<td>45%</td>
<td>45% of tax due on returned income (-) advance tax paid up to 15th September</td>
<td>3 months</td>
</tr>
<tr>
<td>15th December</td>
<td>75%</td>
<td>75% of tax due on returned income (-) advance tax paid up to 15th December</td>
<td>3 months</td>
</tr>
<tr>
<td>15th March</td>
<td>100%</td>
<td>100% of tax due on returned income (-) advance tax paid up to 15th March</td>
<td>1 month</td>
</tr>
</tbody>
</table>

*Note – However, if the advance tax paid by the assessee on the current income, on or before 15th June or 15th September, is not less than 12% or, as the case may be, 36% of the tax due on the returned income, then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates.*

(2) Computation of interest under section 234C in case of an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1):

*In case an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1), as the case may be, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before 15th March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.*
(3) **Non-applicability of interest under section 234C in certain cases:**

Interest under section 234C shall not be leviable in respect of any shortfall in payment of tax due on returned income, where such shortfall is on account of under-estimate or failure to estimate –

(i) the amount of capital gains;

(ii) income of nature referred to in section 2(24)(ix) i.e., winnings from lotteries, crossword puzzles etc.;

(iii) income under the head “Profits and gains of business or profession” in cases where the income accrues or arises under the said head for the first time;

(iv) **income of the nature referred to in section 115BBDA i.e., dividend in aggregate exceeding of ₹10 lakhs received during the previous year.**

However, the assessee should have paid the whole of the amount of tax payable in respect of such income referred to in (i), (ii), (iii) or (iv), as the case may be, had such income been a part of the total income, as part of the remaining instalments of advance tax which are due or where no such instalments are due, by 31st March of the financial year.

(4) **Tax due on the returned income:** means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of –

(i) any tax deductible or collectible at source on any income which is taken into account for calculating the total income.

(ii) any relief of tax allowed under section 90 or 90A;

(iii) any deduction of tax allowed under section 91;

(iv) any tax credit allowed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

**15.11.4 Interest on excess refund granted at the time of summary assessment [Section 234D]**

(1) **Applicability:** Under section 143(4), where a regular assessment under section 143(3) or section 144 is made, any tax or interest paid under section 143(1) shall be deemed to have been paid towards such regular assessment and if no refund is due on regular assessment or the amount refunded under section 143(1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded is deemed to be tax payable by the assessee. In order to charge interest for the period during which the refund amount has been utilised by the assessee, section 234D levies interest on excess refund granted at the time of summary assessment.
(2) **Rate and period of interest**: Where any refund is granted to the assessee under section 143(1) and no refund is due on regular assessment or the amount refunded under section 143(1) exceeds the amount refundable on regular assessment, then, the assessee shall be liable to pay simple interest at the rate of ½% on the whole or the excess amount so refunded for every month or part of the month from the date of grant of the refund to the date of such regular assessment.

*Note* - *An assessment made for the first time under section 147 or section 153A shall be regarded as regular assessment for the purpose of this section.*

(3) **Reduction of interest**: The interest chargeable under sub-section (1) shall be reduced, where, as a consequence to the order passed due to rectification, appeal, revisions etc. under sections 154/155/250/254/260/262/263/264 or an order of the Settlement Commission under section 245D(4), the amount of refund granted under section 143(1) is held to be correctly allowed.

### 15.11.5 Fee for default in furnishing TDS/TCS Statements [Section 234E]

(1) **Quantum of fee**: A fee of ₹ 200 for every day would be levied under section 234E for late furnishing of TDS/TCS statement from the due date of furnishing of TDS/TCS statement to the date of furnishing of TDS/TCS statement. However, the total amount of fee shall not exceed the total amount of tax deductible/collectible and such fee has to be paid before delivering the TDS/TCS statement.

(2) **Penalty**: In addition to said fee, a penalty ranging from a minimum of ₹ 10,000 to a maximum of ₹ 1,00,000 shall also be levied under section 271H for not furnishing TDS/TCS statement within the prescribed time or furnishing incorrect information in the said statements in respect of tax deducted or collected at source on or after 01.07.2012. Consequently, with effect from 1.7.2012, penalty shall not be leviable under section 272A in respect of such failure.

(3) **Fee and penalty where TDS/TCS statement is furnished after one year**: Since late furnishing of TDS/TCS statements would attract levy of fees under section 234E, no penalty under section 271H shall be levied for delay in furnishing of TDS/TCS statement, if the TDS/TCS statement is furnished within one year of the prescribed due date after payment of tax deducted or collected along with applicable interest and fee. However, if the delay is beyond the period of one year, both fee under section 234E and penalty under section 271H would be leivable.

### 15.11.6 Fee for default in furnishing return of income [Section 234F]

Where a person, who is required to furnish a return of income under section 139, fails to do so within the prescribed time limit under section 139(1), he shall pay, by way of fee, a sum of –
15.12 COLLECTION AND RECOVERY OF TAX - OTHER METHODS

15.12.1 Payment of tax and defaults by the assessee [Section 220]

(1) Under section 220(1), any amount specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of notice at the place and to the person mentioned in the notice.

(2) If the amount specified in the notice is not paid within the period, the assessee shall be liable to pay simple interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in section 220(1) and ending with the day on which the amount is paid. This is provided for in section 220(2).

(3) The first proviso to section 220(2) states that where as a result of an order under sections 154/155/250/254/260/262/264/245D(4), the amount on which interest payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(4) The liability of the assessee to pay interest is based on the theory of continuity of the proceedings and the doctrine of relation back.

(5) Accordingly, section 220(1A) provides that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be, and any such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 [See Note below]

(6) Further, the second proviso to section 220(2) provides that if as a result of order under the sections specified in the first proviso to section 220(2), the amount of interest payable was reduced, and thereafter, as a result of another order under any of the sections given in the first proviso or section 263, the interest payable was increased, the assessee would be liable to pay

<table>
<thead>
<tr>
<th>Fee</th>
<th>Circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>₹ 5,000</td>
<td>if the return is furnished on or before the 31st December of the assessment year;</td>
</tr>
<tr>
<td>₹ 10,000</td>
<td>in any other case</td>
</tr>
</tbody>
</table>

However, if the total income of the person does not exceed ₹ 5 lakhs, the fees payable shall not exceed ₹ 1,000
interest under section 220(2) from the day immediately following the end of the period mentioned in the first notice of demand referred to in section 220(1) till the date on which the amount is paid.

**Note - Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964**

**Continuation and validation of certain proceedings**

(1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then,-

(a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceeding in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal or proceeding,-

(i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;

(ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee. Further, where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, intimation of the fact of reduction shall also be given to him;

(iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding:

(2) No fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in any appeal or other proceeding under any scheduled Act.

(3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority.
Illustration 21

The Assessing Officer issued a notice of demand under section 156 to Mr. X on 1.10.2016 for payment of ₹ 15 lakhs towards his income-tax liability for the A.Y.2015-16, requiring him to pay the said amount within 30 days.

(a) Is he required to issue fresh notice of demand and if so, for what amount, in the following two cases (each case has to be considered independently) –

(i) If the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250;

(ii) If the tax demand is increased to ₹ 20 lakhs by the Appellate Tribunal, by issue of an order under section 254.

(b) How would the interest liability under section 220(2) be calculated if the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250 and subsequently increased to ₹ 15 lakhs by the Appellate Tribunal by way of issue of order under section 254?

Solution

(a) (i) No fresh notice of demand is required to be served on Mr. X. The Assessing Officer is only required to give an intimation of the fact of reduction of demand to ₹ 12 lakhs to Mr. X. The proceedings initiated on the basis of the original notice of demand may be continued in relation to the reduced amount of ₹ 12 lakhs from the stage at which such proceedings stood immediately before disposal of appeal.

(ii) A fresh notice of demand has to be given only in respect of ₹ 5 lakhs, being the amount of enhancement. Any proceedings in relation to ₹ 15 lakhs covered by the original notice of demand served upon Mr. X may be continued from the stage at which such proceedings stood immediately before disposal of appeal.

(b) The interest under section 220(2) has to be paid on ₹ 15 lakhs @1% per month or part of the month comprised in the period commencing from 1.11.2016 and ending with the date on which the amount is paid, assuming that Mr. X has not paid any interest so far.

(7) Reduction or waiver of interest payable under section 220(2) - Section 220(2A) empowers the Principal Chief Commissioner or Chief Commissioner of Principal Commissioner or Commissioner to reduce or waive any interest payable under section 220(2) if he is satisfied that:

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest was made payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(8) Interest under section 220(2) not leviable where interest is charged u/s 201(1A) or section 206C(7) -
Since the intimation generated after processing the TDS statement under section 200A(1)
would be deemed as a notice of demand under section 156, consequently, interest under section 220 would be attracted for failure to pay the tax specified in the intimation. However, interest under section 201(1A) is leviable for non-payment of tax specified in the intimation. Therefore, it has been provided that in cases where interest is charged for any period under section 201(1A) on the tax specified in the intimation under section 200A, then, interest under section 220(2) would not be levied on the same amount for the same period.

Likewise, since the intimation generated after processing of TCS statement shall be deemed as a notice of demand under section 156, failure to pay the tax specified in the intimation shall attract levy of interest as per the provisions of section 220(2). Section 206C(7) also provides for levy of interest for non-payment of tax specified in the intimation to be issued. In order to remove the possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2), sub-section (2C) of section 220 specifically provides that where interest is charged for any period under section 206C(7) on the amount of tax specified in the intimation issued under 206CB(1), no interest shall be charged under section 220(2) on the same amount for the same period.

15.12.2 Penalty payable [Section 221]

(1) **Penalty for default in payment of tax** - Where an assessee is in default in payment of tax including advance tax and interest payable thereon, the Assessing Officer shall impose a penalty which in cases of continuing default, may be increased from time to time. However, the total penalty should not exceed the tax in arrears. The Assessing Officer should give the assessee a reasonable opportunity of being heard before levying such a penalty.

No penalty shall be levied on the assessee for default in payment of tax in cases where he proves to the satisfaction of the Assessing Officer that default was for good and sufficient reasons.

(2) **Payment of tax before levy of penalty not to absolve the assessee from penalty** - The *Explanation* to section 221(1) provides that an assessee would not cease to be liable to pay any penalty for his default or delay in payment of the tax merely by reason of the fact that before the date of levy of such penalty the tax which was in arrears had actually been paid by him.

Thus wherever there is delay on the part of the assessee, he would be liable to penalty even though by the time the Assessing Officer initiates action for the levy of penalty the amount of tax in arrears is actually paid.

An order imposing penalty is appealable and the assessee’s right of appeal is subject to the condition that he must first pay the tax or penalty; the assessee should first pay the tax before filing the appeal.

(3) **Circumstance when penalty levied will be cancelled** – If, as a consequence of any final order, the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.
15.12.3 Certificate to Tax Recovery Officer (TRO) [Section 222]

(1) **TRO to draw up statement specifying amount of arrears due from an assessee-in-default [Section 222(1)]** - When an assessee is in default or is deemed to be in default in making a payment of tax the TRO may draw up under his signature a statement in the prescribed form and specifying the amount of arrears due from the assessee and shall proceed to recover from such assessee the amount specified in the certificate by one of more of the modes mentioned below in accordance with the Second Schedule.

(a) Attachment and sale of the assessee’s movable property.

(b) Attachment and sale of assessee’s immovable properties.

(c) Arrest of the assessee and his detention in prison.

(d) Appointing a receiver for the management of assessee’s movable and immovable properties.

(2) **Property to include property transferred to spouse/minor child/son’s wife/son’s minor child for inadequate consideration [Proviso to section 222(1)]** - For the purpose of this section, the assessee’s movable or immovable property shall include any property which has been transferred directly or indirectly by the assessee to his spouse or minor child or son’s wife or son’s minor child otherwise than for adequate consideration and which is held by any of the persons aforesaid. So far as the movable or immovable property so transferred to his minor child or his son’s minor child is concerned, they shall even after the date of attainment of majority by such minor child or son’s minor child continue to be included in the assessee’s movable or immovable property for recovering any arrears.

(3) The TRO may take action under sub-section (1) notwithstanding that proceedings or recovery of the arrears by any special mode have been taken.

15.12.4 Tax Recovery Officer (TRO) by whom recovery is to be effected [Section 223]

(1) **TRO competent to take action under section 222**: The TRO competent to take action under section 222 shall be the TRO within whose jurisdiction:

(i) the assessee carries on business or profession.

(ii) the principal place of his business or profession is situated.

(iii) the assessee resides or any movable or immovable property of the assessee is situated.

(2) **Assignment of jurisdiction**: The jurisdiction is assigned either by the CBDT or the Chief Commissioner or Commissioner who is authorised in this behalf by the CBDT under section 120.

(3) **Procedure where an assessee has property within the jurisdiction of more than one TRO**: In such a case, if the TRO by whom the certificate is drawn up is not able to recover the entire amount by sale of the property within his jurisdiction, he may send the certificate to a
TRO within whose jurisdiction the assessee has property. Thereupon, that TRO shall proceed to recover the amount as if the certificate was drawn up by him.

15.12.5 Validity of certificate and cancellation and amendment thereof [Section 224]

(1) The assessee cannot dispute the correctness of any certificate drawn up by the TRO on any ground whatsoever.

(2) However, the TRO is empowered to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

15.12.6 Stay of proceedings in pursuance of certificate and amendment or cancellation thereof [Section 225]

(1) **TRO empowered to grant time for payment of tax:** It shall be lawful for the TRO to grant time for the payment of any tax and when he does so he shall stay proceedings for the recovery of such tax until the expiry of the time so granted.

(2) **TRO empowered to stay proceedings where demand is reduced in appeal but subject matter of further proceedings:** Where as a result of appeal, the demand is reduced but the order is the subject matter of further proceedings, the TRO shall stay the recovery of such part of the amount specified in the certificate as pertains to such deduction for the period in which an appeal or other proceedings remains pending.

(3) **TRO empowered to modify or cancel certificate where demand is reduced on appeal:** Where a certificate has been drawn up and subsequently, as a result of appellate order the amount is reduced, the TRO shall modify the certificate or cancel it if it is necessary, when the order which was the subject matter of appeal or other proceeding becomes final and conclusive.

15.12.7 Other modes of recovery [Section 226 & 227]

(1) **Recovery of tax where certificate has/has not been drawn up under section 222:**

<table>
<thead>
<tr>
<th>Whether Certificate has been drawn up under section 222?</th>
<th>Income-tax authority empowered to recover taxes by one or more of the modes specified in section 226</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) No</td>
<td>Assessing Officer</td>
</tr>
<tr>
<td>(ii) Yes</td>
<td>TRO, without prejudice to the modes of recovery specified in section 222</td>
</tr>
</tbody>
</table>

*Note* - This section enumerates the various modes of recovery by the Assessing Officer and Tax TRO. Students may refer to the section in the Bare Act for details.
(2) **Non-validity of claim in regard to any property where notice is issued**: Any claim in regard to any property in relation to which a notice under this section is issued, shall be void as against any demand contained therein.

(3) **Consequences where the person on whom notice is served objects on oath**: Where a person, on whom a notice (garnishee order) under this section has been served, objects on oath that the amount demanded from him is not due to the assessee or that he does not hold any money for or on account of the assessee, he cannot be compelled by the Assessing Officer to make the payment. However, if it is later found that such a statement made by him was false, he would personally become liable to pay the amount to the Assessing Officer or TRO to the extent of his own liability to the assessee or to the extent of the assessee’s liability, whichever is less.

Such personal liability would arise even in cases where the person in receipt of a notice from the Assessing Officer or TRO, makes a payment in disregard of the notice served on him.

(4) **Recovery of tax dues from money in custody of a Court or Receiver and distraint and sale of movable property**: Moneys belonging to the assessee-in-default which are in the custody of a Court or Receiver are also liable for attachment. Further, on being authorised by the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/ Commissioner, the Assessing Officer or the TRO is also empowered, by general or special order to recover any arrears of tax due by distraint and sale of movable property as laid down in the Third Schedule. For details, students may refer to the Third Schedule in the Act.

(5) **Recovery through State Government**: In addition, tax may be recovered through the State Government if the recovery of tax in any area has been entrusted to it under the Constitution. In such a case, the State Government may direct that the tax shall be recovered in respect of any particular area together with the municipal taxes or local rates by the municipality or local authority [Section 227].

**15.12.8 Recovery of tax in pursuance of agreements with foreign countries [Section 228A]**

(1) 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 or any authority under that Government.

(2) Where the Government of the foreign country or any authority under that Government sends a certificate to the CBDT for the recovery of any tax due under that law from a person having any property in India, the CBDT may forward such certificate to any TRO within whose jurisdiction such property is situated.

(3) The TRO shall proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222.
(4) Thereafter, the TRO has to remit any sum so recovered to the CBDT after deducting the expenses in connection with the recovery proceedings.

(5) Where an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may, if the assessee has property in a country outside India, forward to the CBDT a certificate drawn up by him under section 222 and the CBDT may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

15.12.9 Tax Clearance Certificate [Section 230]

(1) **Undertaking to be furnished by a person not domiciled in India visiting India in connection with business, profession or employment [Section 230(1)]**

(i) No person, who is not domiciled in India and who has come to India in connection with business, profession or employment; and who has income derived from any source in India, shall leave the territory of India by land, sea or air unless he furnishes to the prescribed authority an undertaking in the prescribed form.

(ii) The said undertaking should be furnished from the employer of the said person or through whom such person is in receipt of the income.

(iii) The undertaking should be to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer or the person through whom any income is receivable by the first-mentioned person.

(iv) The prescribed authority shall, on receipt of the undertaking, immediately give to such person a no-objection certificate, for leaving India.

(v) However, the provisions contained in sub-section (1) shall not apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

(2) **Furnishing of PAN by person domiciled in India at the time of departure [Section 230(1A)]**

(i) Every person, who is domiciled in India at the time of his departure, shall furnish, to the income-tax authority or such other authority as may be prescribed his permanent account number allotted to him under section 139A, the purpose of his visit and the estimated period of his stay outside India.

(ii) In case no such permanent account number has been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a permanent account number under the Income-tax Act, 1961 a certificate in the prescribed form shall be furnished to the income-tax authority or such other authority, as may be prescribed.

(iii) However, where an income-tax authority opines that there exist circumstances which
render an Indian domiciled to obtain a certificate under this section, such person shall not leave the territory of India by land, sea or air unless -

(a) he obtains a certificate from the income-tax authority stating that he has no liabilities under the Income-tax Act 1961 and the Wealth-tax Act, 1957 or

(b) that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person [First proviso to sub-section (1A)]

(iv) No income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons therefor and obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax.

(3) Personal liability of owner or charterer of ship or aircraft carrying such persons [Section 230(2) & (3)]

If the owner or charterer of any ship or aircraft carrying persons from any place in India to any place outside India allows any of the above mentioned persons to travel by such ship or aircraft without first satisfying that such person is in possession of a certificate as required, he shall be personally liable to pay the whole or any part of the tax payable by such person. In such a case, the owner or charterer shall be deemed to be an assessee in default for such sum and recovery shall be as if it were an arrear of tax.

**Note** - The expressions “owner” and “charterer” include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(4) Power to make Rules [Section 230(4)]

The CBDT is empowered to make Rules for carrying out the provisions of this section.

15.12.10 Recovery by suit or under other law [Section 232]

Section 232 provides that the Assessing Officer or the Government can have recourse to the other modes of recovery under any other law for the time being in force, over the above various modes specified above to recover the tax dues under the Act, in the same way as other debts due to the Government. It shall also be lawful for the Assessing Officer or the Government to take recourse to any other law or file a suit in any manner for the recovery of the arrears due from the assessee.

15.13 REFUNDS

(1) Eligibility [Sections 237 and 242]

(i) An assessee is entitled to claim a refund of tax if the tax actually paid (and not merely
payable) by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount of tax with which he is properly chargeable under the Act for that year.

(ii) This may arise usually as a result of excess deduction of tax at source from salaries, dividends, interest, to or as a result of excess payment of advance tax or when the tax originally paid on assessment is reduced on appeal, revision, rectification or reference.

(iii) Where such a claim or refund is made, the assessee cannot question the correctness or validity of the assessment or any other matter related thereto which has become final and conclusive. He is also debarred from asking for a review or revision of the assessment.

(2) **Persons entitled to claim refund in certain cases [Section 238]**

(i) Generally, a claim for refund can be made only by the person on whose account the tax was already paid.

(ii) However, in cases where the income of one person is included in the total income of another person under sections 60 to 65, the latter person alone is entitled to claim the refund.

(iii) If any person is not able to claim or receive the refund due to him on account of his death, mental incapacity, insolvency, dissolution, liquidation, etc., his legal representative or trustee, guardian liquidator or receiver, the case may be, is entitled to claim or receive the refund on behalf of such person.

(3) **Claim for refund to be in prescribed form [Section 239(1)]**

(i) All claims of refunds should be made in the prescribed form [Form No. 30] and verified in the prescribed manner in accordance with Rule 41 of the Income-tax Rules, 1962 and shall be accompanied by the return of income in form prescribed under section 139(1) except in cases where such a return had already been filed.

(ii) The requirements of the Rule are mandatory in nature and if an application or refund is not in compliance with the requirement of the Rule, it would be invalid and consequently will not be entertained.

(iii) Where any part of the total income of a person making a claim for refund of tax consists of income from which tax has been deducted under the provisions of sections 192 to 194, section 194A and section 195, the claim for refund should be accompanied by the certificate of tax deducted at source.

(iv) The claim may be presented by the claimant in person or through a duly authorised agent or may be sent by post.
(4) Limitation [Section 239(2)]

The time-limit for making application for refund is one year from the last day of the relevant assessment year.

(5) Refund on appeal etc. [Section 240]

(i) Where refund becomes due to the assessee as a result of an order passed in appeal or any other proceeding under the Income-tax Act, 1961, he need not make an application to claim the same.

(ii) In such a case, the Assessing Officer is bound to pass an order of refund without waiting for the application from the assessee.

(iii) Where, by the order aforesaid, an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund shall become due only on the making of such fresh assessment.

(iv) Where the assessment is annulled the refund shall become due only of the amount of tax paid in excess of the tax chargeable on the total income returned by the assessee.

(6) Withholding of refund in certain cases [Section 241A]

(i) In a case where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion, having regard to the fact that notice has been issued under section 143(2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, withhold refund upto the date on which the assessment is made.

(ii) However, for withholding the refund, he has to satisfy the following two conditions:

   (a) The prior approval of the Principal Commissioner or Commissioner has to be obtained; and

   (b) The reasons have to be recorded in writing.

(iii) The above provisions would apply for A.Y.2017-18 and subsequent years.

(7) Correctness of assessment not to be questioned [Section 242]

(i) While making a claim for refund, an assessee cannot question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same.

(ii) The assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

(8) Interest on Refunds [Section 244A]

(i) Applicability and Rate: interest at ½% for every month or part of a month shall be payable on tax or penalty becoming refundable on account of excess payment of advance tax, advance tax on fringe benefits, tax deducted at source or collected at
source and other tax or penalty becoming refundable.

(ii) **Period of interest**: Interest @0.5% for every month or part of a month for the period specified in the following table for each of the cases mentioned in column (2) hereunder –

<table>
<thead>
<tr>
<th>Case</th>
<th>Period for grant of interest on refund</th>
<th>Beginning from</th>
<th>Ending with</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Where the refund is out of TCS u/s 206C or paid by way of advance tax or treated as paid u/s 199, during the financial year immediately preceding the A.Y.</td>
<td></td>
<td></td>
<td>Date of grant of refund</td>
</tr>
<tr>
<td>(2) Where the return is filed on or before the due date u/s 139(1)</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; April of the assessment year</td>
<td></td>
<td>Date of grant of refund</td>
</tr>
<tr>
<td>(2) Where the return is filed after the due date</td>
<td>the date of filing of return</td>
<td></td>
<td>Date of grant of refund</td>
</tr>
<tr>
<td>(b) Where the refund is out of self-assessment tax paid u/s 140A</td>
<td>Date of furnishing return of income or payment of tax, whichever is later</td>
<td></td>
<td>Date of grant of refund</td>
</tr>
<tr>
<td>(c) In any other case</td>
<td>Date of payment of tax or penalty</td>
<td></td>
<td>Date of grant of refund</td>
</tr>
</tbody>
</table>

**Note** – The assessee can claim interest on refund due also in pursuance of determination of total income under section 143(1) or on regular assessment. However, no interest shall be payable if the amount of refund due is less than 10% of the tax determined under section 143(1) or on regular assessment, in case of (a) and (b) above.

(iii) **Additional interest payable on refund arising out of fresh assessment order giving effect to appellate or revisionary order**: Where a refund arises as a result of giving effect to an order under section 250/254/260/262/264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under section 244A(1), an additional interest on such refund amount calculated at the rate of 3% p.a., for the period beginning from the date following the date of expiry of the time allowed under section 153(5) to the date on which the refund is granted. Further, in cases where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to section 153(5), the
period of additional interest, if any, shall begin from the expiry of such extended period.

<table>
<thead>
<tr>
<th>Circumstance</th>
<th>Period³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where a refund arises as a result of giving effect to an order under section 250/254/260/262/264, wholly or partly, otherwise than by making a fresh assessment or reassessment</td>
<td>From the expiry of 3 months from the end of the month in which the order u/s 250/254/260/262 is received, or order u/s 263 or 264 is passed, by the PCC/CC/PC/CIT.</td>
</tr>
<tr>
<td>Where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to section 153(5)</td>
<td>From the expiry of 9 months from the end of the month in which the order u/s 250/254/260/262 is received, or order u/s 263 or 264 is passed, by the PCC/CC/PC/CIT.</td>
</tr>
<tr>
<td>Where the order of rectification, appeal or revision requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee</td>
<td>From the expiry of 9 months from the end of the F.Y. in which order u/s 254 is received by the PCC/CC/PC/CIT or order u/s 263 or 264 is passed by the PC/CIT.</td>
</tr>
</tbody>
</table>

(iv) **Interest on refund payable to deduc tor [Section 244A(1B)]**: Interest @0.5% for every month or part of a month for the period specified in the following table for each of the cases mentioned in column (1) hereunder –

<table>
<thead>
<tr>
<th>Case</th>
<th>Period for grant of interest on refund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beginning from</td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Where the refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B</td>
<td>Date on which tax is paid</td>
</tr>
<tr>
<td>(1)</td>
<td>Where refund arises on account of giving effect to an order u/s 250/254/260/262</td>
</tr>
<tr>
<td>(2)</td>
<td>In any other case</td>
</tr>
</tbody>
</table>

³Period for which assessee would be entitled to receive additional interest on refund

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(v) **Consequence where delay in granting refund is attributable to the assessee or the deductor [Section 244A(2)]** : Where there is a delay in granting refund and the reasons for such delay are attributable to the assessee or the deductor, as the case may be, either wholly or in part, the period of the delay so attributable to the assessee shall be excluded from the period for which interest is payable. In case any question arises as to the period of delay attributable to the assessee, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(vi) **Increase or reduction of interest of refund as a result of assessment/rectification/appellate/revisionary order [Section 244A(3)]**

(a) Where as a result of an order under sections 143(3)/144/147/154/155/250/254/260/262/264/245D(4), the amount on which interest payable under this section has been increased or reduced, the interest shall be increased or reduced.

(b) If the interest is reduced, the Assessing Officer has to serve a notice of demand on the assessee in the prescribed form specifying the amount of excess interest paid and require him to pay such amount.

(c) Such notice of demand shall be deemed to be notice under section 156 and the provisions of the Act shall accordingly apply.

(vii) **Interest under section 244A is income of the P.Y. in which it is allowed**

Interest allowed under section 244A is the income of the previous year in which it is allowed, and should be declared in the return of income furnished in the assessment year relevant to the previous year.

(viii) **Payment of interest on refund under section 244A of excess TDS deposited under section 195 [Circular No.11/2016 dated 26.4.2016]**

The procedure for refund of tax deducted at source under section 195 to the person deducting the tax is set out in CBDT Circular No.7 /2007 dated 23.10.2007. Circular No.7/2007 states that no interest under section 244A is admissible on refunds to be granted in accordance with the circular or on the refunds already granted in accordance with Circular No.769 or Circular No.790 dated 20.4.2000.

The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Supreme Court of India, in Tata Chemical Limited 1, Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014, held that refund due and payable to the assessee is debt-owed and payable by the Revenue. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest."
In view of the above judgment of the Apex Court, it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195, then it has to be refunded with interest under section 244A from the date of payment of such tax.

(9) Set off of refunds against tax remaining payable [Section 245]

(i) **Set-off of refunds against tax or interest payable**: Where a refund is found due to any person, the Assessing Officer, Commissioner (Appeals) or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against any tax or interest remaining payable by the said person under the Act.

(ii) **Intimation to be given before setting off**: The set off can, however, be done only after giving intimation in writing to such person of the action proposed to be taken under this section.
EXERCISE

Question 1

Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 2017 a sum of ₹ 80,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on 23rd March, 2018 for the quarter ended 31.12.2017.

(i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?

(ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?

(iii) Is there any remedy available to him for reduction/waiver of the levy?

Answer

(i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2017 has to be filed on or before 31st January, 2018. However, the same has been filed only on 23rd March, 2018. Hence, there has been a 51 days delay on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 51 days, he would be liable to pay a fee of ₹ 10,200 (₹ 200 x 51 days) under section 234E. The said fee does not exceed the tax deductible (₹ 80,000, in this case).

(iii) The CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time if it considers expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek waiver/reduction of the penalty levied/leviable under
Question 2

Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover of ₹ 210 lakhs during the previous year 2016-17. Her turnover for the year ended 31-3-2018 was ₹ 90 lakhs.

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2017-18:

(i) Purchase commission paid to one agent ₹ 25,000 on 13.6.2017 towards purchases made during the year.

(ii) Payments to Civil engineer of ₹ 5,00,000 for construction of residential house for self use.

Answer

Since Smt. Vijaya’s turnover was ₹ 210 lakhs in the immediately preceding financial year (i.e., F.Y.2016-17), she is liable to deduct tax at source in the P.Y.2017-18, irrespective of her turnover being only ₹ 90 lakhs in the F.Y.2017-18.

(i) Tax@5% has to be deducted under section 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 15,000 for non-deduction of tax at source thereunder.

(ii) Tax has to be deducted under section 194C in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source under section 194C from such sum.

Question 3

What is the rate at which the tax is either to be deducted or collected under the provisions of the Act in the following cases?

(i) A partnership firm making sales of timber which was procured and obtained under a forest lease.

(ii) Payment of income on investments in the securities to the Foreign Institutional Investor.

(iii) A nationalized bank receiving professional services from a registered society made provision on 31-03-2018 of an amount of ₹ 25 lacs against the service charges bills to be received.
(iv) Payment of ₹ 5 lacs made to Mr. Phelps who is an athlete by a manufacturer of a swim wear for brand ambassador.

Answer

<table>
<thead>
<tr>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partnership firm selling timber obtained under forest lease</td>
</tr>
<tr>
<td>Payment of income on investments in the securities to the Foreign Institutional Investors</td>
</tr>
<tr>
<td>In case the securities are Government securities</td>
</tr>
<tr>
<td>Professional services rendered by a registered society to a nationalised bank</td>
</tr>
<tr>
<td>Payment by a manufacturer of swim wear to its brand ambassador Mr. Phelps, an athlete</td>
</tr>
<tr>
<td>If Mr. Phelps is a resident</td>
</tr>
<tr>
<td>If Mr. Phelps is a non-resident</td>
</tr>
</tbody>
</table>

### Applicable Rate of TDS/TCS

<table>
<thead>
<tr>
<th>Situation</th>
<th>TCS/TDS</th>
<th>Rate</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Partnership firm selling timber obtained under forest lease</td>
<td>TCS</td>
<td>2.5%</td>
<td>1</td>
</tr>
<tr>
<td>(ii) Payment of income on investments in the securities to the Foreign Institutional Investors</td>
<td>TDS</td>
<td>20.6%</td>
<td>2</td>
</tr>
<tr>
<td>In case the securities are Government securities</td>
<td></td>
<td>5.15%</td>
<td></td>
</tr>
<tr>
<td>(iii) Professional services rendered by a registered society to a nationalised bank</td>
<td>TDS</td>
<td>10%</td>
<td>3</td>
</tr>
<tr>
<td>(iv) Payment by a manufacturer of swim wear to its brand ambassador Mr. Phelps, an athlete</td>
<td>TDS</td>
<td>10% 20.6%</td>
<td>4</td>
</tr>
</tbody>
</table>

### Notes:

1. As per section 206C(1), tax has to be collected at source@2½% by the partnership firm, being a seller, 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, whichever is earlier.

2. As per section 196D, tax has to be deducted at source @ 20.6% (20% plus cess@3%) by any person who is responsible for paying to a Foreign Institutional Investor, any income by way of interest on securities at the time of credit of such income to the account of the payee or at the time of payment of such income, whichever is earlier.

   Alternatively, if the said securities are assumed to be government securities, tax is deductible@5.15% (i.e., 5% plus cess@3%) under section 194LD.

3. Tax has to be deducted at source@10% under section 194J, by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2018), even though payment is to be made after that date.

4. Tax has to be deducted at source@10% under section 194J⁴ in respect of income of ₹ 5 lacs

⁴CBDT Circular No.715 dated 8.8.1995
paid to Mr. Phelps, athlete, for advertisement, on the inherent presumption that Mr. Phelps is a resident.

Alternatively, if Mr. Phelps is assumed to be a non-resident, who is not a citizen of India, tax has to be deducted at source@20.6% (20% plus cess 3%) under section 194E in respect of income of ₹ 5 lacs paid to Mr. Phelps, an athlete, for advertisement referred under section 115BBA.

Question 4

Examine the liability for tax deduction at source in the following cases for the assessment year 2018-19:

(i) Wings Ltd. has paid amount of ₹ 15 lacs during the year ended 31-3-2018 to Airports Authority of India towards landing and parking charges.

(ii) Omega Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. John from UK to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission equivalent to ₹ 1 lac to the overseas agent.

(iii) Ramesh gave a building on sub-lease to Mac Ltd. with effect from 1-7-2017 on a rent of ₹ 15,000 per month. The company also took on hire machinery from Ramesh with effect from 1-11-2017 on hire charges of ₹ 10,000 per month. The rent of building and hire charges of machinery for the year 2017-18 were credited by the company to the account of Ramesh in its books of account on 31-3-2018.

(iv) ₹ 2,45,000 paid to Mr. X on 01-02-2018 by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agricultural land?

Answer

(i) **TDS on landing and parking charges**: The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport [Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]. Thus, tax is not deductible under section 194I which provides deduction of tax for payment in the nature of rent.

Hence, tax is deductible @2% under section 194C by the airline company, Wings Ltd., on payment of ₹ 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2017-18.
(ii) **TDS on services of overseas agent outside India:** An overseas agent of an Indian company operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

Since commission income for contacting and negotiating with artists by Mr. John, a non-resident, who remains outside India is not subject to tax in India, consequently, there is no liability for deduction of tax at source. It is assumed that the commission equivalent to ₹ 1 lakh was remitted to Mr. John outside India.

(iii) **TDS on rent for building and machinery:** Tax is deductible on rent under section 194-I, if the aggregate amount of rental income paid or credited to a person exceeds ₹ 1,80,000. Rent includes payment for use of, *inter alia*, building and machinery.

The aggregate payment made by Mac Ltd. to Ramesh towards rent in P.Y.2017-18 is ₹ 1,85,000 (i.e., ₹ 1,35,000 for building and ₹ 50,000 for machinery). Hence, Mac Ltd. has to deduct tax@10% on rent paid for building and tax@2% on rent paid for machinery.

(iv) **TDS on compensation for compulsory acquisition:** Tax is deductible at source @10% under section 194LA, where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural land).

However, no tax deduction is required if the aggregate payments in a year does not exceed ₹ 2,50,000.

Therefore, no tax is required to be deducted at source on payment of ₹ 2,45,000 to Mr. X, since the aggregate payment does not exceed ₹ 2,50,000.

Since the definition of immovable property specifically excludes agricultural land, no tax is deductible at source on compensation paid for compulsory acquisition of agricultural land.

**Question 5**

Examine whether tax has to be deducted at source under the provisions of the Income-tax Act, 1961 in the following situations, which have taken place during the year ended 31-3-2018:

(i) M/s. Jiva & Co., a partnership firm, pays a sum of ₹ 43,000 as interest on loan borrowed from an Indian branch of a foreign bank.

(ii) Above firm has paid ₹ 12,000 as interest on capital to partner Mr. A, a resident in India, and ₹ 24,000 as interest on capital to partner Mr. B, a non-resident.

(iii) The above firm paid ₹ 50,000 being share of profit of partner Mr. B, a non-resident.
Answer

(i) Section 194A requires deduction of tax on any income by way of interest, other than interest on securities, credited or paid to a resident, at the rates in force.

However, it specifically excludes from its scope, income credited or paid to any banking company to which the Banking Regulation Act, 1949 applies.

An Indian branch of a foreign bank, transacting the business of banking in India, is a banking company to which the Banking Regulation Act, 1949 applies. Therefore, interest payment to such bank will not attract tax deduction under section 194A.

Consequently, no tax is required to be deducted at source under section 194A on interest of ₹ 43,000 paid by M/s. Jiva & Co., a partnership firm, on loan borrowed from an Indian branch of a foreign bank.

(ii) Section 194A requiring deduction of tax at source on any income by way of interest, other than interest on securities, credited or paid to a resident, excludes from its scope, income credited or paid by a firm to its partner. Therefore, no tax is required to be deducted at source under section 194A on interest on capital of ₹ 12,000 paid by the firm to Mr. A, a resident partner.

Section 195, which requires tax deduction at source on payments to non-residents, does not provide for any exclusion in respect of payment of interest by a firm to its non-resident partner. Therefore, tax has to be deducted under section 195 at the rates in force in respect of interest on capital of ₹ 24,000 paid to partner Mr. B, a non-resident.

(iii) As per section 10(2A), share of profit received by a partner from the total income of the firm is exempt from tax. Therefore, the share of profit paid to non-resident partner is not liable for tax deduction at source.

However, section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and manner.

Question 6

"Come Air Ltd." has paid a sum of ₹ 12 lakhs during the year ended 31-3-2018 to Airports Authority of India towards landing and parking charges. The company has deducted tax at source@2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS@10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.
Answer

The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facility for the aircraft are for the "use of the land" by the airline company came up before the Supreme Court in Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in Singapore Airlines case and overruled the view taken by the Delhi High Court in United Airlines/Japan Airlines case.

Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source under section 194-I is not correct.

Question 7

Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of ` 60 lakh and ` 15 lakh, respectively, to Mr. Suresh, a retail
Mr. Harish had purchased the house property and rural agricultural land in December 2015 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2017, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively.

(a) Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is 1.7.2017 and the stamp duty value on the said date was ₹ 75 lakh and ₹ 15 lakh, respectively. On the said date, Mr. Suresh made payment of ₹ 5 lakh by way of account payee cheque to Mr. Harish for purchase of house property. Also, discuss the TDS implications, if any, in the hands of Mr. Suresh, assuming that both Mr. Harish and Mr. Suresh are resident Indians.

(b) Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?

**Answer**

(a) Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Harish, a salaried employee

<table>
<thead>
<tr>
<th>(i)</th>
<th>Tax implications in the hands of Mr. Harish, a salaried employee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on sale of house property, being a capital asset.</td>
</tr>
<tr>
<td></td>
<td>As per section 50C(1), the stamp duty value of house property on the date of agreement (i.e., ₹ 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 35 lakh (i.e., ₹ 75 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2018-19.</td>
</tr>
<tr>
<td></td>
<td>It may be noted that under first and second proviso to section 50C(1), the stamp duty value on the date of agreement can be adopted as the advance was received on the date of agreement through account payee cheque. As the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement is to be adopted as the deemed sale consideration.</td>
</tr>
</tbody>
</table>

(ii) Tax implications in the hands of the buyer – Mr. Suresh, a retail trader

|     | The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 56(2)(x) is attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(x), Mr. Suresh can take the stamp duty value on the date of agreement |
instead of the date of registration since he has paid a part of the consideration by account payee cheque on the date of agreement.

Therefore, ₹ 15 lakh, being the difference between the stamp duty value of the property on the date of agreement (i.e., ₹ 75 lakh) and the actual consideration (i.e., ₹ 60 lakh) would be taxable as per section 56(2)(x) under the head “Income from other sources” in the hands of Mr. Suresh.

As rural agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of “property” under section 56(2)(x) includes only capital assets specified thereunder.

(iii) TDS implications in the hands of the buyer, Mr. Suresh

Since the sale consideration of house property exceeded ₹ 50 lakh, Mr. Suresh is required to deduct tax at source under section 194-IA. The tax deduction under section 194-IA would be ₹ 60,000, being 1% of ₹ 60 lakh.

TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Harish, a property dealer:

(i) Tax implications in the hands of Mr. Harish for A.Y.2018-19

If Mr. Harish is a property dealer who has sold the house property in the course of his business, the provisions of section 43CA would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value.

For the purpose of section 43CA, Mr. Harish can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by a mode other than cash on the date of agreement. Therefore, ₹ 35 lakh, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 75 lakh) and the purchase price (i.e., ₹ 40 lakh), would be chargeable as business income in the hands of Mr. Harish.

(ii) TDS implications and taxability in the hands of Mr. Suresh for A.Y.2018-19

There would be no difference in the TDS implications or taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee. Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration. The TDS provisions under section 194-IA would also be attracted since the actual consideration for house property exceeds ₹ 50 lakh.
Question 8

Siddharth Hospitals Pvt. Ltd., 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 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, who is responsible for paying to a resident any sum 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 10% of such sum as TDS.

Further, as per clause (a) of Explanation to section 194J “professional services” includes services rendered by a person in the course of carrying on medical profession.

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

Examine in the context of provisions contained in Chapter XVII of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:

(i) Payment of ₹ 5 lacs made by JCP & Co. to Pingu Events Co. Ltd. for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".

(ii) "Profit Commission" of ₹ 1 lac paid on 10.6.2017 by a re-insurance company to the insurer company after the expiry of the term of insurance and where there was no claim during the treaty.

(iii) KD, a part time director of DAF Pvt. Ltd. was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales for the period 1.4.2017 to 30.6.2017.
Answer

(i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as “professional services” for the purpose of section 194J. In this case, payment of ₹ 5 lacs was made to an event management company for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, tax has to be deducted @ 2% under section 194C. The tax deductible under section 194C would be ₹ 10,000, being 2% of ₹ 5 lacs.

(ii) Section 194D requires deduction of tax at source@5% from insurance commission, where the commission exceeds ₹ 15,000.

Reinsurance is different from insurance since there is no direct contractual relationship between the person insured and the re-insurer.

In order to attract section 194D, the commission or any other payment covered under the section should be a remuneration or reward for soliciting or procuring the insurance business. The insurance companies do not procure business for the reinsurance company nor does the reinsurer pay commission or other payment for soliciting the business from the insurance companies. Therefore, section 194D has no application.

Hence, when profit commission is paid by a reinsurance company to an insurance company, after the expiry of the term of insurance, in respect of cases where there is no claim during the operation of the reinsurance treaty, tax deduction under section 194D is not attracted.

(iii) Section 194J provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source under section 192.

Hence, tax is to be deducted at source under section 194J @10% by DAF Pvt. Ltd. on the commission of ₹ 2,25,000 paid to KD, a part-time director. The tax deductible under section 194J would be ₹ 22,500, being 10% of ₹ 2,25,000.

Question 10

Examine the applicability of the provisions relating to deduction of tax at source in the following transactions:

(i) Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 2017, 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 a professional service for the purposes 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

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

(i) MNO Ltd., the employer, credited salary due for the financial year 2017-18 amounting to ₹ 3,40,000 to the account of Q, an employee, in its books of account on 31.3.2018. 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 ended 31.3.2017 was ₹ 2.20 crores, paid ₹ 9 lacs by cheque on 1.1.2018 to a contractor (an individual), for construction of his factory building. 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 6.10.2017. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2017.

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.

If salary has been paid during the year to Q, then, MNO Ltd has to obtain from Q, the evidence-proof/particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.

If Q has not furnished any information about his income/loss under any other head or proof of investments/expenditure qualifying for deduction under section 80C, then, the employer has to deduct tax without considering any claim for any expenditure or set-off of losses or deduction under section 80C.

(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 2017-18 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Turnover of the individual T is ₹ 2.20 crores in the financial year 2016-17. Therefore, T is liable to get his accounts for that year audited under section 44AB. As the payment during financial year 2017-18 to the contractor has 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 would apply separately 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
Question 12

Examine the liability for tax deduction at source in the following cases for the assessment year 2018-19:

(i) Mr. Anand has been running a sole proprietary business whose accounts are audited under section 44AB with turnover of ₹ 202 lakhs for the A.Y. 2017-18. He pays a monthly rent of ₹ 10,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of ₹ 6,000 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 whose value is estimated at ₹ 1,20,000.

(iv) A notified infrastructure debt fund eligible for exemption under section 10(47) of the Income-tax Act, 1961 pays interest of ₹ 5 lakhs to a company incorporated in USA. The US Company incurred expenditure of ₹ 12,000 for earning such interest. The fund also pays interest of ₹ 3 lakhs to Mr. X, who is a resident of a notified jurisdictional area.

Answer

(i) Where the payer is an individual or HUF whose turnover exceeds the monetary limits specified in clause (a) of section 44AB, he has to deduct tax at source. Since the turnover of Mr. Anand was ₹ 202 lakhs for the A.Y. 2017-18, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2017-18.

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 ₹ 10,000 p.m., service charge of ₹ 6,000 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 2016-17 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)  

<table>
<thead>
<tr>
<th>Description</th>
<th>Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary, allowances and monetary perquisites</td>
<td>6,80,000</td>
</tr>
<tr>
<td>Non-Monetary perquisites</td>
<td>1,20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>8,00,000</td>
</tr>
<tr>
<td><strong>Tax Liability</strong></td>
<td>74,675</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Average rate of tax (74,675 / 8,00,000 × 100)</td>
<td>9.33%</td>
</tr>
</tbody>
</table>

The company can deduct ₹ 74,675 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 = 9.33% of ₹ 1,20,000 = ₹ 11,196

Balance to be deducted from salary = ₹ 63,479

If the company pays tax of ₹ 11,196 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a). The amount of tax paid towards non-monetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per section 10(10CC).

(iv) As per section 194LB, tax would be deductible @ 5% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption under section 10(47), to a foreign company.

In the first case, since the payment is to a foreign company, education cess @2% and secondary higher education cess @1% have to be added to the applicable rate of TDS. Therefore, the tax deductible under section 194LB would be ₹ 25,750 (i.e., 5.15% of ₹ 5 lakhs).

However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible @30% (plus education cess@2% and secondary and higher education cess@1%) under section 94A, even though section 194LB provides for deduction of tax at a concessional rate of 5%. Therefore, the tax deductible in respect of payment of ₹ 3 lakh to Mr. X, who is a resident of a notified jurisdictional area, would be ₹ 92,700, being 30.9% of ₹ 3,00,000.

**Question 13**

The following issues arise in connection with the deduction of tax at source under Chapter XVII-B. Examine 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.
(b) A T.V. channel pays ₹ 10 lakh on 1.9.2017 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 ₹ 22,000 on 2.7.2017 as commission to one of its agents on sale of lottery tickets.

(f) A Turf Club awards a jack-pot of ₹ 5 lakh to the winner of one of its races on 1.2.2018.

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, as per sub-section (2A) of that section, the employee will be entitled to relief under section 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E). The person responsible for making the payment shall compute the relief and take into account the same while deducting 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%. Therefore, tax of Rs.3 lakh has to be deducted at source from the prize money of ₹ 10 lakh payable to the winner.

(c) Section 194-I, which governs the deduction of tax at source on payment of rent, exceeding ₹ 1,80,000 p.a., is applicable to all taxable entities except individuals and HUFs, whose turnover/gross receipts do not exceed the monetary limits specified under clause (a) of section 44AB. Section 196, however, provides exemption in respect of payments made to Government from application of the provisions of tax deduction at source.

Therefore, no tax is required to be deducted at source by State Bank of India from rental payments to the Government.

(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 ₹ 15,000, deduct income-tax at source @5%.

Accordingly, tax @5% under section 194G amounting to ₹ 1,100 has to be deducted from commission payment of ₹ 22,000 to the agent of the State Government.

(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 ₹ 10,000. Accordingly, tax@30% amounting to ₹ 1,50,000 has to be deducted from the winnings of ₹ 5 lakh payable to the winner of the race.

**Question 14**

Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2018

(i) Mr. X, a resident, acquired a house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, on 20.6.2017. On the same day, Mr. X made two separate transactions, thereby acquiring an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for a consideration of ₹ 60 lakhs.

(ii) On 17.6.2017, a commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.

(iii) Mr. S won a motor car in a lucky draw held by 'P' marketing. The market price of car was ₹ 4,00,000. P marketing erroneously gave the car to Mr. S without deducting tax at source. Examine the liability of P marketing to make such payment, if any.

(iv) Raj is working with AB Ltd. He is entitled to a salary of ₹ 45,000 per month w.e.f. 1.4.2017. He has a house property which is self-occupied. He paid an interest of ₹ 80,000 on loan, during the previous year 2017-18. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 80,000 in respect of this house property for financial year ended 31.3.2018.

**Answer**

<table>
<thead>
<tr>
<th></th>
<th>Amount of TDS (₹)</th>
</tr>
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<tbody>
<tr>
<td>(i)</td>
<td>Since the consideration for transfer of house property at Mumbai exceeds ₹ 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% under section 194-I A on ₹ 90 lakhs, being the amount of consideration for transfer of property. Mr. X is not required to deduct tax as source under section 194-I A from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration is less than ₹ 50 lakhs. Mr. X is also not required to deduct tax at source under section 194-I A from the consideration of ₹ 60 lakhs paid to Mr. D for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction under section 194-I A.</td>
</tr>
</tbody>
</table>

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**Note -** Section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of such sum, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property is less than `50 lakhs.

(ii) Section 194H requires deduction of tax at source @5% from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed `15,000.

In the given case, ‘ABC Packaging Ltd.’, the consignee, has not remitted the commission of `50,000 to the consignor ‘XYZ Developers’ while remitting the sales consideration.

Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission [CBDT Circular No.619 dated 4/12/1991].

Therefore, XYZ Developers has to deduct tax at source on `50,000 at the rate of 5%.

(iii) Section 194B provides that the person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle, card game and any other game of any sort in an amount exceeding `10,000 shall deduct tax at source @ 30%.

However, in case where winnings are wholly in kind, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings. Where the winnings are wholly in kind, the responsibility cast under section 194B is to ensure that tax is paid by the winner of the prize before the prize is released in his favour.

This can be done, by collecting from the winner, a sum equal to the tax deductible at source on the winnings in kind and, thus, meeting the liability for TDS, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind [Circular No.763 dated 7/2/1998]

In the given case, P marketing has released the car without ensuring tax payment of `1,20,000, being 30% of `4,00,000 (being the value of car) by Mr. S.

P Marketing is therefore liable for penalty under section 271C and prosecution under section 276B [CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1 (Kar.)]
Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made.

The employee may declare details of his other incomes (including loss under the head “Income from house property” but not any other loss) to his employer. In this case, since Mr. Raj has notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source.

Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 45,000 per month paid to Mr. Raj, in the following manner:

| Income under the head salaries (45,000 x 12) | 5,40,000 |
| Income under the head “house property” | (80,000) |
| Gross total income | 4,60,000 |
| Less: Deduction under Chapter VI-A | Nil |
| **Total Income** | **4,60,000** |
| Tax@10% on ₹ 2,10,000, being the amount arrived at after reducing the basic exemption limit of ₹ 2,50,000 from ₹ 4,60,000 | 10,500 |
| Add: Education cess@2% and secondary and higher education cess@1% | 315 |
| **Tax to be deducted at source** | **10,815** |

**Question 15**

A foreign company seconded some employees to the assessee, an Indian collaborator. These employees worked with the Indian collaborator throughout the P.Y.2017-18. The employees were in receipt of salary from the Indian collaborator. They were also in receipt of special allowance directly from the foreign company in foreign currency outside India. The Indian collaborator deducted tax under section 192, on the component of salary paid by it, without taking into account the special allowance paid abroad by the foreign company in foreign currency to these employees. For this reason, the Revenue authorities treated the Indian collaborator as an ‘assessee-in-default’ under section 201 for non-deduction of tax at source on the “special allowance” component of salary paid by the foreign company.

Is such treatment by the Revenue Authorities and the consequent levy of interest and penalty justified?

**Answer**

Section 9(1)(ii) provides that any income which falls under the head “salaries” is deemed to
accrue or arise in India, if it is earned in India. The *Explanation* thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.

Section 192(1) requires the person responsible for paying any income chargeable under the head “Salaries” to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.

Since the TDS provisions relating to payment of income chargeable under the head “Salaries” form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(1)(ii) and the *Explanation* thereto. Therefore, if any payment under the head “Salaries” falls within section 9(1)(ii), then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductor assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(1) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company.

It was so held by the Apex Court in *CIT, New Delhi v. Eli Lilly & Co. (India) P. Ltd.* (2009) 312 ITR 225.

In this case, all the employees are resident in India, since they have worked with the Indian collaborator throughout the previous year 2017-18. If the tax due on special allowance received from the foreign company is paid by the recipient-employees, then, the Indian collaborator would not be treated as an assessee-in-default under section 201(1), if these resident-employees have furnished a return of income under section 139 on or before the due date of filing return of income, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form. However, interest under section 201(1A)@1% per month or part of month shall be payable by the Indian collaborator from the date on which such tax was deductible to the date of furnishing of return by such resident employee.

In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed under section 201(1) to recover the shortfall in payment of tax and interest thereon under section 201(1A).

However, no penalty under section 271C would be attracted, if the Indian collaborator was under the genuine and *bona fide* belief that it was not under any obligation to deduct tax at source from the special allowance paid by the foreign company. This is provided for under section 273B.
SIGNIFICANT SELECT CASES

1. Whether “tips” received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of “Salaries” to attract tax deduction at source under section 192?

*ITC Ltd v. CIT (2016) 384 ITR 14 (SC)*

**Facts of the case:** The assessee company, engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from customers. In case of credit card payments by the customers, the employer company collected the tips which were later on disbursed to its employees. The Assessing Officer treated the receipt of tips as income under the head “Salaries” in the hands of the employees and contended that the assessee was liable to deduct tax at source from such payments under section 192. As the assessee company had not deducted tax at source on the tips disbursed to the employees, the Assessing Officer treated the assessee as assessee in default under section 201(1).

However, the Commissioner (Appeals) held that the assessee could not be treated as assessee in default under section 201(1) for non-deduction of tax on tips collected by them and disbursed to their employees. Thereafter, the Tribunal also dismissed the appeal of the revenue.

**High Court’s Decision:** The High Court held that the tips would amount to “profit in addition to salary or wages” and hence would fall under section 15 read with section 17(1) and section 17(3). It also held that while the tips received by the employees directly from customers would be outside the purview of section 192 but the moment a tip is paid by the customer by way of credit card along with the bill amount to the employer, it would assume the character of salary since it goes into the account of the employer after which it is distributed to the employees.

**Supreme Court’s Observations:** The Apex Court analysed the provisions of section 192 and noted that “any person responsible” for paying any income chargeable under the head “salaries” is alone brought into the dragnet of deduction of tax at source. The person responsible for paying an employee an amount which is to be regarded as the employee’s income is only the employer. However, in the present case, the person who is responsible for paying the employee is not the employer at all, but a third party, namely, the customer. Thus, income from tips would be chargeable in the hands of employees as “Income from Other Sources”. Since such tips are being received from customers and not from the employer, section 192 would not get attracted.

The Supreme Court observed that section 15 applies when an employee has a vested right to claim any salary from an employer or former employer. However, in the case on hand, there
is no vested right on the part of the employee to claim any amount of tips from the employer, since tips are purely voluntary amounts that may or may not be paid by customers for services rendered.

The Supreme Court observed that the amount of tips paid by the employer to the employees had no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee.

Therefore, the tips received by the employees could not be regarded as “profits in lieu of salary” in terms of section 17(3). The payment by the employer of tips collected from the customers to the employees would not be a payment made “by or on behalf of” an employer. Such payments would be outside the purview of section 15(b) of the Act.

The Apex Court observed that the person who paid the tip was the customer and not the employer. Even though the amounts were with the employer he had no title to the money and it was held in a fiduciary capacity as trustee for and on behalf of the employees.

**Supreme Court’s Decision:** The Supreme Court observed that contract of employment is not the proximate cause for the receipt of tips by the employee from a customer hence, it would be outside the dragnet of sections 15 and 17 of the Act. Therefore, it held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.

### 2. Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?

**UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)**

**Facts of the case:** The assessee-bank accepted ₹ 707.46 lakhs as fixed deposit in the name of Registrar General of the High Court and issued a fixed deposit receipt in compliance with a direction passed by the court in relation to certain proceedings. Subsequently, the Assistant Commissioner of Income-tax issued a show cause notice to the bank for not deducting tax at source on the interest accrued and to show cause as to why it should not be treated as an assessee-in-default under section 201(1)/201(1A). The bank replied that the FDRs in the name of Registrar General of the Court was as a custodian because the actual beneficiary was unknown as the matter was sub judice and tax at source would be deducted when the payment is made to beneficiary as and when it is decided by the court. The Assistant Commissioner, however, passed an order treating the bank as assessee-in-default and raised a demand of ₹ 40.33 lakhs and ₹ 14.20 lakhs under sections 201(1) and 201(1A), respectively. Further, he initiated penalty proceedings under section 271C. The assessee preferred a writ challenging the order passed imposing penal interest and initiation of penalty proceedings.
**High Court’s Opinion and Decision:** The High Court opined that in the normal course, the bank is obliged to deduct tax at source in respect of any credit or payment of interest on deposits made with it. However, in this case, the actual payee is not ascertainable and the person in whose name the interest is credited is not a person liable to pay tax under the Act. The deposits kept with the bank under the orders of the court were, essentially, funds which were in *custodia legis*, that is, funds in the custody of the court. The interest on that account – although credited in the name of the Registrar General – was also part of funds under the custody of the Court. The Registrar General is not the recipient of the income represented by interest that accrues on the deposits made in his name. The credit of interest is not a credit to the account of a person who is liable to be assessed to tax.

The High Court observed that in the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The expression “payee” under section 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a ‘payee’ for the purposes of section 194A. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.

The High Court was of the view that *Circular No.8/2011 dated 14.10.2011* makes an assumption that the litigant depositing the money is the account holder with the bank or is the recipient of the income represented by the interest accruing thereon. This assumption is basically erroneous as the litigant who is asked to deposit the money in Court ceases to have any control or proprietary right over these funds. The person to whom the funds would be paid ultimately is determined by the court order and at that stage, tax would be required to be deducted at source to the credit of the recipient. However, the litigant who deposits the funds cannot be stated to be the recipient of income.

The High Court allowed the writ and set aside the orders passed by the tax authorities.

**Note** - The CBDT has accepted the aforesaid judgment and accordingly, vide *Circular No.23/2015 dated 28.12.2015*, clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

3. Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?

*CIT v. Hindustan Lever Ltd. (2014) 361 ITR 0001 (Kar.)*

**Facts of the case:** In the present case, the assessee is a company engaged in the business of
manufacture and sale of various consumer goods/products. During the previous years relevant to A.Y.2001-02 and A.Y.2002-03, it had conducted certain sales promotion schemes. The assessee advertised the schemes wherein coupons were inserted in packs/containers of their products. Some of those coupons indicated that on purchase of the packs/containers, they would get prizes, as indicated in coupons. The prizes that were offered were Santro car, Maruti car, gold chains, gold coins, gold tablas, silver coins, emblems, etc. The total amount of prizes distributed valued ₹ 6,51,238 for the A.Y.2001-02 and ₹ 54,73,643 for the A.Y.2002-03.

The Assessing Officer, having received the information about the schemes, sought clarification and also conducted survey of the assessee's business premises under section 133A. The Assessing Officer, thereafter, passed an order dated 3.1.2002, under sections 201(1) and 201(1A) for the A.Y.2001-02 and treated the assessee as an assessee-in-default of its obligation in terms of section 194B. Similar order was passed for the A.Y.2002-03. According to the Assessing Officer, the assessee was obliged to ensure that the tax in respect of the winnings, wholly in kind, was remitted before the winnings were released. Having failed to do so, the proceedings under section 201(1) were initiated. The Assessing Officer held that although the customers did not pay anything extra to receive the prize, nevertheless, they had participated in the scheme by purchasing the products advertised to take a chance at winning the prize. It was further held that what has been paid as prize-in-kind in various schemes conducted by the assessee is a lottery on which the tax was deductible under section 194B. As the assessee neither deducted the tax nor ensured payment thereof before the winnings were released, he treated the assessee as an assessee-in-default. He passed similar order dated 28.3.2002 for the A.Y.2002-03.

Appellate Tribunal's view: The Tribunal held that the schemes conducted by the assessee were not a lottery, as the said expression was understood up to the A.Y.2001-02. The Tribunal observed that the customers did not pay any excess amount for getting coupons indicating winnings in the packs/containers of products they purchased, and, therefore, nothing was paid by them for participating in the scheme. Accordingly, the Tribunal concluded that although there was an element of chance but as no consideration or payment was made by the customers for the purpose of participation in the lottery with the object of winning the prizes, the schemes conducted by the assessee would not fall within the ambit of section 194B.

The Tribunal further held that having regard to the insertion of Explanation below section 2(24)(ix), the scheme conducted by the assessee would be a lottery for the A.Y.2002-03 but nevertheless they accepted the alternate contention that having regard to Circular No. 390, dated August 8, 1984 [See (1984) 149 ITR (St.) 5], there was no obligation on the respondent to deduct tax at source in respect of prizes paid in kind and in the absence of any such obligation, no proceedings under section 201 could be taken against the respondent.

High Court's view: From a bare perusal of section 194B, it is clear that the person responsible for paying to any person any income by way of winnings from any lottery in an
amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force. A combined reading of sections 194B and 201 shows that if any such person fails to "deduct" the whole or any part of the tax or after deducting, fails to pay the tax as required by or under the Act, then such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax. The provisions contained in these sections do not cast any duty to deduct tax at source where the winnings are wholly in kind. If the winnings are wholly in kind, as a matter of fact, there cannot be any deduction of tax at source. The word "deduction" employed in this provision postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter. Where the winnings are wholly in kind the question of deduction of any sum therefrom does not arise and in that eventuality, the only responsibility, as cast under section 194B, is to ensure that tax is paid by the winner of the prize before the prize or winnings is or are released in his favour.

**High Court’s Decision:** The High Court observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint Commissioner to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the High Court held that proceedings under section 201 cannot be initiated against the assessee.

4. Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?

*Ajmer Vidyut Vitrani Nigam Ltd., In re (2013) 353 ITR 640 (AAR)*

**Facts of the case:** In the present case, the applicant is a government company engaged in the business of distribution and supply of electricity to customers in various districts of Rajasthan. The activity of distribution is preceded by the production of electricity and its transmission from the point of production to the point of distribution. The production is by the generating company, which is another entity and transmission to the applicant is through the transmission system network of the transmission company. The transmission company carries the electrical energy to the applicant at the distribution system network of the applicant. The applicant then distributes the energy to the end customers.

The transmission of electricity from the point of generation to the point of distribution of the applicant is termed as “wheeling”. The applicant pays transmission and wheeling charges for
this wheeling, which it contends are statutory charges. The transmission company also functions as a State Load Dispatch Centre (SLDC), which is responsible for the general coordination of production and transmission of electricity to ensure uniform distribution in the State. The applicant pays to the transmission company, SLDC charges, which it claims as statutory in nature, since the levy is in terms of the Electricity Act, 2003.

**Applicant’s contention:** The applicant contended that the above charges were not in the nature of fees for technical services to attract TDS provisions under section 194J, on the following grounds –

(i) The transmission does not involve rendering of any technical services nor were technically qualified staff of the transmission company involved in the transmission of electrical energy;

(ii) The SLDC charges were also mere statutory charges and does not involve rendering of technical services;

(iii) The payment of transmission, wheeling and SLDC charges were in the nature of reimbursement of actual cost and hence, do not generate any income in the hands of the transmission company.

**Revenue’s contention:** The Revenue, on the other hand, was of the view that the transmission of electrical energy from the point of generation to the point of distribution of the applicant involves rendering of technical services and consequently, the applicant was bound to withhold tax. The Revenue supported its view on the basis of the following contentions –

(i) Transmission of electrical energy is a technical service and requires constant involvement of a technical system consisting of sophisticated instruments, constant monitoring and supervision by persons with a technical ability and knowledge to operate and manage the system so as to ensure regular and consistent supply of electricity at the grid voltage at the distribution point of the applicant.

(ii) As regards SLDC charges, the services rendered require the technical support and services of technically qualified staff and therefore they were technical services within the meaning of section 194J.

(iii) The fact that the contract between both the parties is backed by a statutory obligation cannot alter the nature of services rendered.

**AAR’s Observations:** The AAR did not agree with the applicant’s contention regarding transmission and wheeling charges not constituting fees for technical services on the ground that no rendering of technical services was involved for maintaining proper and regular transmission of electrical energy. It was also not in agreement with the applicant’s argument that the services of technical personnel were not needed for ensuring due and proper transmission of electrical energy from the generation point to the distribution point. The AAR concurred with the Revenue’s view that the personnel of the transmission company had to ensure regular and consistent transmission of electrical energy at the grid voltage at the
DEDUCTION, COLLECTION AND RECOVERY OF TAX

distribution point of the applicant.

AAR’s Decision: The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J.

As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS provisions under section 194J or under section 194C.

5. Can discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract the provisions for tax deduction under section 194H?

CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)

Issue: The principal issue in this case is whether stamp vendors are agents of the State Government who are being paid commission or brokerage or whether the sale of stamp papers by the Government to the licensed vendors is on “principal-to-principal” basis involving a “contract of sale”.

High Court’s Observations: On this issue, the Gujarat High Court had in, Ahmedabad Stamp Vendors Association v. Union of India (2012) 348 ITR 378, observed that the crucial question is whether the ownership in the stamp papers passes to the stamp vendor when the treasury officer delivers stamp papers on payment of price less discount. The Gujarat Stamp Supply and Sales Rules, 1987 contemplates that the licensed vendor, while taking delivery of the stamp papers from the Government offices, is purchasing the stamp papers. The Rules also indicate that the discount which the licensed vendor has obtained from the Government is on purchase of the stamp papers.

If the licensed stamp vendors were mere agents of the State Government, no sales tax would have been leviable when the stamp vendors sell the stamp papers to the customers, because it would have been sale by the Government “through” stamp vendors. However, entry 84 in Schedule I to the Gujarat Sales Tax Act, 1969 specifically exempts sale of stamp papers by the licensed vendors from sales-tax. The very basis of the State Legislature enacting such exemption provision in respect of sale of stamp papers by the licensed vendors makes it clear that the sale of stamp papers by the licensed vendors to the customers would have, but for such exemption, been subject to sales tax levy. The question of levy of sales tax arises only because the licensed vendors themselves sell the stamp papers on their own and not as
agents of the State Government. Had they been treated as agents of the State Government, there would be no question of levy of sales tax on sale of stamp papers by them, and consequently, there would have been no necessity for any exemption provision in this regard.

Therefore, although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on "principal to principal" basis and there is no "contract of agency" at any point of time. The definition of "commission or brokerage" under clause (i) of the Explanation to section 194H indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, inter alia, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of "commission or brokerage" under Explanation (i) to section 194H. When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods. The High Court, therefore, held that discount on purchase of stamp papers does not fall within the expression "commission or brokerage" to attract the provisions of tax deduction at source under section 194H.

**Supreme Court’s Decision:** The Supreme Court affirmed the above decision of the High Court holding that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.

6. Can incentives given to stockists and distributors by a manufacturing company be treated as “commission” to attract –

(i) the provisions for tax deduction at source under section 194H; and

(ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?

*CIT v. Intervet India P Ltd (2014) 364 ITR 238 (Bom)*

**Facts of the case:** The assessee-company engaged in manufacture of biological vaccines and animal health care pharmaceutical products, sold the same either through consignment or commission agents or directly through distributors or stockists. During the relevant financial year, it introduced a sales promotion scheme to boost sales by way of product discounts and product campaign. It passed on the incentives to distributors through consignment agents by way of sales credit notes. The Assessing Officer held that as the assessee was paying the stockists/distributors for the services rendered by them for buying and selling goods, on the basis of quantum of sales effected, such payment has to be considered as commission, on which tax was deductible at source under section 194H. Consequently, disallowance under section 40(a)(ia) was attracted for failure to deduct tax at source.
**High Court's Observations:** The High Court observed that the assessee had undertaken sales promotion by way of product discount scheme under which it offered incentive to the stockists / distributors and dealers. **The relationship between the assessee and the distributors / stockists was that of principal to principal.** The products were firstly sold to distributors / stockists who in turn resold the goods in the market. No service was offered by the assessee to them except a discount under the product discount scheme/product campaign scheme to buy the assessee’s product.

**High Court’s Decision:** The High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the *Explanation (i)* to section 194H. Accordingly, the High Court affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.

### 7. Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H?

*Bharti Cellular Ltd. v. ACIT (2013) 354 ITR 507 (Cal.)*

**High Court’s Observations:** On this issue, the Calcutta High Court observed the Supreme Court ruling in *Bhopal Sugar Mills’ case (1977) 40 STC 42*, wherein it was held that the true relationship between the parties has to be gathered from the nature of the contract, its terms and conditions. The terminology used by the parties is not decisive of the said relationship.

The High Court, on perusal of the agreement between the assessee-telecom company and the franchisees, observed that –

1. the property in the start-up pack and pre-paid coupons, even after transfer and delivery to the franchisee, remained with the assessee-telecom company;
2. the franchisee really acted as a facilitator and/or instrument of providing services by the assessee-telecom company to the ultimate subscriber;
3. the franchisee had no free choice to sell the pre-paid coupons and sim cards and everything including the selling price was regulated by the assessee-telecom company;
4. the rate at which the franchisee sells to the retailers is also regulated and fixed by the assessee-telecom company.

In the real sense, the franchisee acted on behalf of the assessee-telecom company for selling start-up pack, prepaid recharge coupons to the customer. Therefore, the relationship between the assessee and the franchisee is essentially that of principal and agent, though the nomenclature used is “franchisee”. The franchisees were, thus, agents of the assessee, getting a fixed percentage of commission, in the form of discount.
**High Court’s Decision:** Considering the above, the High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H.

**Note** - Similar ruling was pronounced by the Kerala High Court in Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255, wherein it was held that there was no sale of goods involved as claimed by the assessee-telecom company and the entire charges collected by the assessee from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. The assessee was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of the assessee for procuring and retaining customers and consequently, the discount given to him was within the meaning of commission on which tax was deductible under section 194H.

8. Can the difference between the published price and the minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline company to attract TDS provisions under section 194H, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents?

*CIT v. Qatar Airways (2011) 332 ITR 253 (Bom.)*

**Facts of the case:** In this case, the airline company sold tickets to the agents at a minimum fixed commercial price. The agents were permitted to sell the tickets at a higher price, however, up to the maximum of published price. Commission at the rate of 9% of published price was payable to the agents of the airline company, on which tax was deducted under section 194H. The issue under consideration is whether the difference between the published price and the minimum fixed commercial price amounts to additional special commission in the hands of the agents to attract the provisions of section 194H.

**High Court’s Observations:** On this issue, the Bombay High Court observed that the difference between the published price and minimum fixed commercial price cannot be taken as additional special commission in the hands of the agents, since the published price was the maximum price and airline company had granted permission to the agents to sell the tickets at a price lower than the published price. In order to deduct tax at source, the exact income in the hands of the agents must necessarily be ascertainable by the airline company. However, the airline company would have no information about the exact rate at which the tickets were ultimately sold by its agents, 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 each ticket sold.
**High Court’s Decision:** Thus, tax at source was not deductible on the difference between the actual sale 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 his hands.

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**Note -** It may be noted that in the case of CIT v. Singapore Airlines Ltd. (2009) 319 ITR 29, the billing analysis statement clearly indicated the extra commission in the form of special or supplementary commission that was paid to the travel agent with reference to the deal code. Therefore, in that case, the Delhi High Court, held that the supplementary commission in the hands of the agent was ascertainable by the airline company and hence the airline company was liable to deduct tax at source on the same under section 194H.

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9. Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I?


**Facts of the case:** The assessee in both the cases are foreign airlines. Being international airlines, they fly their aircrafts to several destinations across the world, including New Delhi. For landing the aircrafts and parking thereof at the Indira Gandhi International Airport (IGIA), New Delhi, the Airports Authority of India (AAI) levies charges on these airlines. The airlines are deducting tax @2% under section 194C for payment of landing and parking charges in respect of its aircrafts to AAI and remitting the same. However, the income-tax authorities are of the view that tax is to be deducted at the higher rate applicable under section 194-I (currently, 10%).

**Issue under consideration:** The issue under consideration is whether landing and parking charges paid by the airline companies to AAI is in the nature of rent to attract tax deduction at source under section 194-I.

**Delhi High Court’s view vis-a-vis Madras High Court’s view:** On this issue, contrary views were expressed by the Delhi High Court in *Japan Airlines Co. Ltd.*’s case and the Madras High Court in *Singapore Airlines Ltd.*’s case.

The Delhi High Court observed that “rent” as defined in section 194-I has a wider meaning than rent in common parlance and includes any agreement or arrangement for use of land. The Delhi High Court further observed that 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 Delhi High Court, following its own judgment in the case of *United Airlines v. CIT* (2006) 287 ITR 281 held that 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.
The Madras High Court, however, expressed a contrary view on the above issue in *CIT v. Singapore Airlines Ltd.* (2012) 209 Taxman 581 (Mad.). The Court has observed that only if the agreement or arrangement has the characteristics of lease or sub-lease or tenancy for systematic use of the land, the charges levied would fall for consideration under the definition of 'rent' for the purpose of section 194-I.

The Madras High Court further observed that the principles guiding the levy of charges on landing and take-off show that the charges are with reference to the number of facilities provided by the Airport Authority of India in compliance with the international protocols and the charges are not made for any specified land usage or area allotted. The charges are for various facilities offered to meet the requirement of passenger safety and for safe landing and parking of the aircraft. Thus, the charges levied are, at the best, in the nature of fee for the services offered rather than in the nature of rent for the use of the land.

Therefore, the levy of charges, which is not only for the use of land, but for maintenance of various services, including 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 in the nature of lease or tenancy so that the charges would fall within the meaning of 'rent' as appearing in *Explanation* to section 194-I.

Thus, the Madras High Court held that going by the nature of services offered by the AAI in respect of landing and parking charges, collected from the assessee, there is no ground to accept that the payment would fit in with the definition of “rent” as given under section 194-I.

**Supreme Court's Observations:** The Apex Court considered the moot question as to whether landing and take-off facilities on the one hand and parking facility on the other hand would tantamount to use of land. After due consideration of the views of the Delhi High Court and the Madras High Court on this issue, the Supreme Court concluded that the Madras High Court’s view is justified on the basis of sound rationale and reasoning.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, it is not mere "use of the land". On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

For example, runways are not constructed like any ordinary roads. Special technology is
required for the construction of these runways for smooth landing and take-off of the aircrafts. Specialised kind of orientation and dimensions are needed for these runways which are prescribed with precision and those standards are to be adhered to. Further, there has to be proper runway lighting, runway safety area, runway markings, etc. Technical specifications for such lighting, safety area and markings are stipulated which have to be provided. The technical specifications keep in mind the basic fact, namely, on landing, the aircraft is light on fuel and usually less than 5% of the weight of the aircraft touches the runway in one go. On take-off, the aircraft is heavy but as the aircraft accelerates, the weight gradually moves from the wheels to the wings. The technological aspects of these runways have been emphasized in some detail to highlight the precision in designing and engineering which goes into making these runways fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of an aircraft and in this whole process, "use of the land" pales into insignificance.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.

**Supreme Court’s Decision:** The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the full and larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in Singapore Airlines case and overruled the view taken by the Delhi High Court in United Airlines/Japan Airlines case.

The Supreme Court was, however, not in agreement with the Madras High Court’s view that the words "any other agreement or arrangement for the use of any land or any building" have to be read *ejusdem generis* and it should take its colour from the earlier portion of the definition, namely, "lease, sub-lease and tenancy", thereby, limiting the ambit of the words "any other agreement or arrangement". The Supreme Court observed that this reasoning was not correct. A bare reading of the definition of "rent" contained in Explanation to section 194-I would make it clear that in the first place, the payment, by whatever name called, under any lease, sub-lease, tenancy is to be treated as "rent". This is rent as understood in the traditional sense. However, the second part is independent of the first part which gives a much wider scope to the term "rent". Accordingly, whenever payment is made for use of any land or any building by any other agreement or arrangement, that is also to be treated as "rent". Once such a payment is made for use of land or building under any other agreement or arrangement, such agreement or arrangement gives the definition of “rent” a very wide
connotation. The Supreme Court observed that the interpretation of the Delhi High Court appears to be correct to that extent i.e., to the extent that the scope of the definition of rent under section 194-I is very wide and not limited to what is understood as rent in common parlance; though the Delhi High Court did not apply this definition correctly to the present case as it failed to notice that in substance the charges paid by these airlines are not for "use of land" but for other facilities and services wherein the use of the land was only a minor and insignificant aspect. Thus, the Supreme Court was of the considered view that the Delhi High Court did not correctly appreciate the nature of charges that are paid by the airlines as landing and parking charges, in the sense, it did not appreciate that such charges were not, in substance, for use of land but for various other facilities extended by the Airports Authority of India to the airlines.

10. Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?

**Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del)**

**Facts of the case:** The assessee owned a network of telecom towers and infrastructure services which were let out to major telecom operators in the country. Under section 197, the assessee sought for lower tax deduction under section 194C for the financial year 2013-14 at 0.5% and whereas the Assessing Officer issued a certificate under section 197 for lower tax deduction at 2.5% under section 194-I. The assessee filed a writ before the Delhi High Court. The Court directed the assessee to prefer a revision petition before the Commissioner of Income-tax.

The Commissioner of Income-tax rejected the contention of the assessee for applying section 194C and upheld the order of the Assessing Officer applying section 194-I, on the ground that the mobile operators had the right to install the equipment on the tower owned by the assessee, which tantamounts to use of the land or telecommunication site and the tower owned by the assessee. The assessee once again preferred a writ before the High Court.

**Assessee’s Contentions:** The assessee explained that its responsibility is to provide the entire passive infrastructure service with the aid of equipment belonging to it which is fully operated, controlled and managed by it. The customers do not have access, control or possession over the towers, sites or designated areas which are limited to rectification or maintenance of any defects in the equipments installed by them. The assessee, further, contended that its customers do not pay for any leasing rights but only for the services. Therefore, the provisions of section 194-I would not be attracted in this case.

**High Court’s Observations:** The High Court observed that it was the intention of the parties to use the technical and specialized equipment maintained by the assessee. The infrastructure was given for the use of mobile operators. The towers were the neutral platform without which the mobile operators could not operate. Each mobile operator has to carry out this activity, by necessarily renting premises and installing the same equipment. The dominant intention was the use of equipment or plant or machinery and the use of
premises was only incidental.

**High Court’s Decision:** The High Court held that the submission of the assessee that the transaction is not “renting” is incorrect. Also, the Revenue’s contention that the transaction is primarily “renting of land” is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.

11. In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source? 

_CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)_

**Facts of the case:** In the present case, the assessee was paying rent for the leased premises occupied. The said premise was co-owned and the share of each co-owner was definite and ascertainable. Also, the assessee made payment to each co-owner separately by way of cheque. The assessee did not deduct tax at source under section 194-I stipulating that the payment made to each co-owner was less than the minimum threshold mentioned in the said section (now, ₹ 1,80,000) and therefore, no liability to deduct tax at source on the rent so paid is attracted, though the whole rent taken together exceeds the said threshold limit.

**Revenue’s contentions:** The Revenue contended that since the premises let out to the assessee had not been divided/partitioned by metes and bounds, it cannot be said that any specified portion let out to the assessee was owned by a particular person. Therefore, the assessee had to deduct tax at source on the rent so paid assessing the co-owners as association of persons and the threshold limit mentioned in section 194-I was to be seen in respect of the entire rent amount. Hence, the Revenue was of the view that assessee was liable to deduct tax on the payment of rent and interest would be leviable on failure to deduct such tax under section 201.

**High Court’s Decision:** Considering the above mentioned facts, the Allahabad High Court held that, since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26.

Therefore, in the present case, since the payment of rent is made to each co-owner by way of
separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.

12. Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?

_CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)_

**Facts of the case:** In this case, the assessee was engaged in the business of transportation of building material, salt, black trap, iron, etc. During the relevant previous year, the assessee made payment for hiring of dumpers and deducted tax at source at the rate under section 194C applicable for sub-contracts which, according to the Assessing Officer, was not correct as the assessee had taken dumpers on hire and such payments were governed under section 194-I. The Assessing Officer, accordingly, held that the assessee had short deducted tax at source and passed an order under section 201(1) holding the assessee to be an assessee-in-default.

**High Court’s Observations:** The High Court observed that the assessee had given contracts to the parties for the transportation of goods and had not taken machinery and equipment on rent. The Court observed that the transactions being in the nature of contracts for shifting of goods from one place to another would be covered as works contracts, thereby attracting the provisions of section 194C.

**High Court’s Decision:** Since the assessee had given sub-contracts for transportation of goods and not for the renting out of machinery or equipment, such payments could not be termed as rent paid for the use of machinery and the provisions of section 194-I would, therefore, not be applicable.

**Note - Similar ruling was pronounced by the Gujarat High Court on an identical issue in CIT (TDS) v. Swayam Shipping Services (P) Ltd. (2011) 339 ITR 647.**

13. Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?


**Facts of the case:** The assessee company was engaged in the business of share broking, depositories, mobilisation of deposits and marketing public issues. Being a member of the Bombay Stock Exchange (BSE), it made payment to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility and other facilities. These services are available to all the members of the stock exchange in respect of every
transaction that is entered into. Revenue contended that tax is deductible at source under section 194J considering such transaction charges as “fees for technical services”.

**High Court's Decision:** The Bombay High Court held that the transaction charges paid by a member of the BSE to the stock exchange to transact business of sale and purchase of shares amounts to payment of a “fee for technical services” and hence, tax is deductible at source under section 194J.

**Supreme Court's Observations:** The Apex Court made the following observations:

- The services provided by the stock exchange are available to all members in respect of every transaction that is entered into. There is nothing special, exclusive or customized in the service that is rendered by the stock exchange.

- A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. Each and every transaction by a member involves the use of such services provided by the stock exchange for which the member is required to pay transaction charge based on the transaction value besides charges for the membership of the stock exchange.

- Technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. *It is the above feature that would distinguish or identify a service provider from a facility offered.*

- However, there is no exclusivity in the services rendered by the stock exchange and each and every member has to avail such service in the normal course of trading in securities in the stock exchange.

**Supreme Court’s Decision:** The Apex Court, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service.

Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

14. **Is tax is required to be deducted under section 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?**

*CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (FB)*
Facts of the case: In the present case, the assessee, being a company engaged in the business of mining and export of processed iron ore as also in construction business, claimed demurrage charges paid to a foreign shipping company on which no tax was deducted at source under section 195 as deductible expenditure. Since tax was not deducted at source under section 195, the Assessing Officer, in view of provisions of section 40(a)(i), disallowed the claim of expenditure in respect of such demurrage charges paid.

High Court's Observations: The High Court took note of the Tribunal’s observation that section 40(a)(i) would apply only when there is an obligation to deduct tax at source. The Tribunal placed reliance upon the CBDT Circular No. 723 dated September 19, 1995 to support its conclusion that there was no obligation to deduct tax at source in respect of payment made towards demurrage charges to non-resident shipping company falling within the scope of section 172. The Revenue did not dispute that section 172 applied in the present case. Section 172 is a charging as well as machinery provision in respect of non-resident shipping companies. It provides for determination and collection of tax. Thus, no obligation to deduct at source under section 195 would arise in respect of payment of demurrage charges to such companies.

The High Court also noted that section 172 is a complete code that applies to non-resident Indians and section 195 is part of recovery provision under the Income-tax Act, 1961.

The provisions of section 172 would apply notwithstanding anything contained in the other provision of this Act, for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident which carries passengers, etc. shipped at a port in India. Since section 172(1) begins with a non-obstante clause, it would prevail over other provisions of the Act including section 195. Thus, the provisions contained thereunder would take care of the manner of determination of income from shipping business of non-residents as well as the levy and recovery of tax thereon.

High Court’s Decision: The High Court, accordingly, held that since section 172 dealing with shipping business of non-residents contains a non-obstante clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, there would be no obligation on the payer-assessee to deduct the tax at source under section 195 on payment of demurrage charges to the non-resident shipping company.

15. Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?

DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014) 364 ITR 227 (Bom)

Facts of the case: The assessee, an event management company, engaged the services of an agent to bring artistes to India. The assessee-company (i) paid commission to overseas
agent; (ii) reimbursed the expenses in connection with the visit of the artistes in India; and (iii) paid fees to the artistes in India. The assessee-company deducted tax at source on the fees paid to the international artistes in India but did not deduct tax at source on the commission paid to the agent and on the reimbursement of expenses incurred in India by the artistes.

**Assessing Officer's view vis-à-vis Commissioner (Appeals) view:** The Assessing Officer contended that the payments made by the assessee including the payment made by way of commission to the agent and payment for reimbursement of expenses in connection with the visit of the artistes to India are liable for tax deduction at source. The Commissioner (Appeals) was of the view that expenses incurred and reimbursed do not constitute income derived by the artistes from their personal activities, so as to be taxable under Article 18 of the Double Taxation Avoidance Agreement between India and UK; and hence, the same is not liable for deduction of tax at source.

**Issue:** The issue under consideration before the High Court was with regard to deduction of tax on commission paid to overseas agent who never took part in the events organized in India and amount paid as reimbursement of expenses incurred on travelling of artistes.

**High Court's Observations:** The High Court observed that the assessee has deducted tax on the payments made to artistes for the services rendered in India. In so far as reimbursement of expenses is concerned, it has been verified with supporting documents that it was towards their air travel on which no tax was required to be deducted. With regard to the payment of commission, the agent did not act as a performing artist or entertainer. He was concerned only with the services rendered outside India. Thus, the Tribunal had recorded the finding of fact that the income of the agent did not arise from the personal activities in the contracting status of an entertainer or artist. He only contacted the artistes and negotiated with them for performance in India in terms of the authority given by the assessee. Hence, the commission paid to the overseas agent was not liable to tax in India. Consequently, there was no obligation for deducting tax at source at the time of making payment to the overseas agent.

**High Court’s Decision:** The High Court, therefore, affirmed the decision of the Tribunal and Commissioner (Appeals) holding that the service rendered by the agent was outside India and hence, was not chargeable to tax in India. Thus, the requirement for deducting tax at source under section 195 on such payment does not arise.

16. Can items of finished products from ship breaking activity which are usable as such be treated as “Scrap” to attract provisions for tax collection at source under section 206C?

**CIT v. Priya Blue Industries (P) Ltd (2016) 381 ITR 210 (Guj)**

**Facts of the case:** The assessee-company, engaged in ship breaking activity, sold old and used plates, wood etc. It did not produce any document or papers to show collection of tax at
source on sale of such items and payment thereof to the credit of the Central Government nor was certificate in Form No.27C produced. The Assessing Officer observed that such items were in the nature of scrap and therefore, the assessee was under an obligation to collect tax at source from the buyers of scrap. Accordingly, he raised a demand under section 201(1) and interest under section 201(1A). The assessee claimed that such items are usable as such, and are hence not 'scrap' to attract the provisions for collection of tax at source.

**Appellate Authorities’ views:** The Commissioner (Appeals) observed that the assessee was engaged in ship breaking activity and the products obtained from the activity were finished products which constituted sizable chunk of production done by the ship breakers. The Commissioner (Appeals) agreed with the assessee that such products though commercially known as ‘scrap’ were definitely not “waste and scrap”. He further agreed with the contention of the assessee that the items in question were usable as such and, therefore, do not fall within the definition of "scrap" as given in clause (b) of Explanation to section 206C(1).

The Tribunal firstly recorded a list of items sold by the assessee from the ship breaking activity. It found that the assessee collected and paid tax, for seven items, but did not collect tax at source on certain items viz. old and used plates; non-excisable (exempted) goods like wood etc. It observed that the ‘waste and scrap’ must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not ‘waste and scrap’ though commercially known as scrap. Accordingly, the Tribunal also decided the issue in favour of the assessee.

**High Court’s Decision:** The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression ‘scrap’ as defined in clause (b) of the Explanation to section 206C.

17. **Is levy of interest under section 234B attracted in a case where the assessment order does not contain any specific direction for payment of interest, but is accompanied by form ITNS 150 containing a calculation of interest payable on tax assessed?**


**Facts of the case:** The assessment order passed did not contain any direction for the payment of interest under section 234B. The appellate order also simply stated that interest is payable under section 234B, without any further substantiation. The amount of interest payable under section 234B was contained in the Income-tax Computation Form or ‘Form for Assessment of Tax/Refund (I.T.N.S 150)’.

**Apex Court’s Observations:** The Apex Court observed that the facts of the present case are squarely covered by the three judges’ bench decision of this court in the case of *Kalyankumar Ray v. CIT (1991) 191 ITR 634*, wherein it was held that the Form I.T.N.S 150 is also a form...
for determination of tax payable and when it is signed or initialled by the Assessing Officer, it is certainly an order in writing by the Assessing Officer determining the tax payable within the meaning of section 143(3). The said form also contains the calculation of interest payable on the tax assessed. This form must, therefore, be treated as part of the assessment order.

The Supreme Court further observed that the provisions of section 234B are attracted the moment an assessee liable to pay advance tax has failed to pay such tax or the advance tax paid by him is less than 90% of the assessed tax. The assessee, thus, becomes liable to pay simple interest at 1% for every month or part of the month.

**Supreme Court's Decision:** The Apex Court, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified therein are satisfied and the assessment order is accompanied by the prescribed form containing the calculation of interest payable.