TDS credit will be available, based on evidence produced, even if no TDS certificate is available or no TDS entry is found in the system of the tax department

16 October 2013

Background

Recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Citicorp Finance (India) Limited1 (the taxpayer) held that tax credit cannot be denied to the taxpayer even if Tax Deducted at Source (TDS) Certificate is not available with the taxpayer or TDS entry is not shown in computer generated Form 26AS. The Tribunal held that the tax department was required to give TDS credit once valid TDS certificate had been produced or where the deductor had not issued TDS certificates, on the basis of evidence produced by the taxpayer for deduction of tax and on the basis of indemnity bond.

Facts of the case

- During the Assessment Year (AY) 2007-08, the taxpayer claimed total TDS of INR 215.2 million. However, the Assessing Officer (AO) gave TDS credit only to the amount of INR 119 million.
- The Commissioner of Income-tax (Appeals) [CIT(A)] held that the taxpayer has to furnish all TDS certificates and the AO needs to verify the same. Accordingly, the AO may allow TDS credit as per original challans available on record or as per the details of such TDS available on the computer system of the tax department.

Issue before the Tribunal

- Whether TDS credit can be given if TDS Certificate is not available with the taxpayer or entry is not shown in Form 26AS?

Taxpayer’s contentions

- Relying on the decision of Yashpal Sawhney2 it was contended that TDS credit has to be given on the basis of TDS certificates and in case TDS certificates are not available, it has to be given on the basis of details and evidence furnished by the taxpayer for deduction of tax at source.

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1 Citicorp Finance (India) Limited v. ACIT (ITA No. 8532/Mum/2011) – Taxsutra.com

2 Yashpal Sawhney v. ACIT [2007] 293 ITR 539 (Bom)
• The taxpayer relied on the decision of the Delhi High Court in the case of Court On Its Own Motion\(^3\) wherein the High Court has held that the tax department need to give tax credit to the deductee on the basis of details and evidences furnished, where the deductor does not upload the correct details in the Form 26AS.

• The new system of Form 26AS was applicable from AY 2009-10 and was not applicable in the present case. Therefore, the tax department may be directed to allow TDS credit on the basis of TDS certificate or indemnity bond and on the basis of tax credit shown in Form 26AS.

**Tribunal’s ruling**

• The difficulty faced by the taxpayer in the matter of TDS credit had been considered by the Bombay High Court in the case of Yashpal Sahwney. In the said decision it was held that even if deductor had not issued TDS certificate, the claim of the taxpayer has to be considered on the basis of evidence produced for deduction of tax at source as the tax department was empowered to recover the tax from the person responsible for deduction of tax if he had not deducted tax or after deducting failed to deposit with the Central Government.

• The Delhi High Court in the case of Court On Its Own Motion have also directed the tax department to give TDS credit to the taxpayer, where deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the tax department.

• The tax department was required to give TDS credit once valid TDS certificate had been produced or where the deductor had not issued TDS certificates, on the basis of evidence produced by the taxpayer for deduction of tax and on the basis of indemnity bond.

• Accordingly, the Tribunal modified the order of the CIT(A) and directed the AO to give TDS credit on the basis of evidence produced by the taxpayer for deduction of tax at source.

**Our comments**

This is a welcome ruling of the Mumbai Tribunal where it has been held that the tax credit cannot be denied to the taxpayer even if TDS Certificate is not available with the taxpayer or TDS entry is not shown in Form 26AS.

It is important to note the decision of the Mumbai Tribunal in the case of 3i Infotech Limited\(^4\) where the Mumbai Tribunal has held that merely because the tax department’s system does not indicate the TDS refund; it cannot be held that the taxpayer should be compelled to deposit the amount. It is for the tax department to check the errors in its system or point out fallacy in the taxpayer’s claim.

\(^3\) Court On Its Own Motion v. CIT [2013] 352 ITR 273 (Del)

\(^4\) 3i Infotech Limited (ITA No.7786/Mum/2012, dated 1 February 2013)
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