



Section 206AA of the Income-tax Act does not override the beneficial provisions of the tax treaty

Background

Recently, the Chennai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Pricol Ltd¹ (the taxpayer) held that Section 206AA of the Income-tax Act, 1961 (the Act) does not override the provisions of Section 90(2)² of the Act and accordingly the rate of tax deducted at source prescribed in the tax treaty shall prevail.

Facts of the case

- The taxpayer filed statements of deduction of tax at source in the Form 27Q for 2nd and 3rd quarters of the Assessment Year (AY) 2011-12 in respect of payments made to non-resident during the relevant period.
- The Assessing Officer (AO) on examination of Form 27Q issued intimation under Section 200A of the Act and held that there was a short deduction of tax at source. Accordingly, the AO raised a demand with interest chargeable on such short deduction of tax.
- The Commissioner of Income-tax (Appeals) [CIT(A)] observed that the provisions of Section 90(2) of the Act will override all other provisions of the Act since that section aims to give effect to tax treaty entered between India and other foreign governments. Thereafter, the CIT(A) directed the AO to deduct tax at source at 10 per cent as against 20 per cent demanded by the AO.

Tribunal's ruling

- The Tribunal in the present case has referred the decision of the Pune Tribunal in the case of Serum Institute of India Ltd.³ wherein the Pune Tribunal has categorically held that Section 206AA of the Act does not override the provisions of Section 90(2) of the Act, and accordingly the rate of tax deducted at source prescribed in the tax treaty shall prevail.
- Following the said decision, the order of the CIT(A), who has only directed the AO to compute tax at 10 per cent as prescribed in the tax treaty has been upheld. Consequently, Section 200A of the Act cannot be invoked in the case of the taxpayer.

Our comments

The issue with respect to deduction of tax at source at the rate of 20 per cent under Section 206AA of the Act where the tax treaty benefit is available, has been a matter of debate before the Courts/Tribunal.

The Bangalore Tribunal in the case of Wipro Ltd.⁴ held that TDS provisions under the Act have to be read along with the tax treaty for computing the tax liability on a particular sum. When the recipient is eligible for the benefit of the tax treaty, there is no scope for deduction of tax at source at the rate of 20 per cent under the provisions of Section 206AA of the Act. On the other hand, the Bangalore

¹ DCIT v. Pricol Ltd (ITA No. 56 & 57/Mads/2014) – Taxsutra.com

² Where the central government has entered into an agreement with the government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the taxpayer to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that taxpayer

³ DCIT v. Serum Institute of India Ltd. [2015] 56 taxmann.com 1 (Pune)

⁴ Wipro Ltd. v. ITO (2016-TII-27-ITAT-BANG-INTL) [IT (IT) A. Nos.1544 to 1547/Bang/2013]

Tribunal in the case of Bosch Ltd⁵ held that the provisions of Section 206AA of the Act override the other provisions of the Act. Therefore, a non-resident whose income is chargeable to tax in India has to obtain PAN and provide the same to the tax deductor. However, if the non-resident's income is not chargeable to tax in India, he is not required to apply and obtain PAN.

In the case of Serum Institute of India Limited, the Pune Tribunal has held that Section 206AA of the Act being a procedural section cannot override Section 90(2) of the Act. Subsequently, the Bangalore Tribunal in case of Infosys BPO Limited⁶ has followed the decision of the Pune Tribunal, despite the contrary view of the coordinate bench in case of Bosch Ltd.

The Finance Act, 2016 has amended provisions of Section 206AA of the Act. It provides that Section 206AA of the Act shall not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment⁷, subject to such conditions as may be prescribed. The Finance Minister while introducing the Finance Bill 2016 in the Lok Sabha stated that non-residents without a PAN are currently subjected to a higher rate of TDS, therefore, it is proposed that on furnishing of alternative documents, the higher rate will not apply under the relevant provisions of the Act.

This is a welcome step by the government, and it may reduce litigation with respect to the applicability of Section 206AA of the Act. It would be apt if Government issues a guideline dealing with instances when the higher rate under Section 206AA of the Act will not apply.



⁵ Bosch Ltd v. ITO [2012] 141 ITD 38 (Bang)

⁶ ADIT v. Infosys BPO Limited (ITA Nos. 8 & 9(B)/2014) (Bang)

⁷ Any other payment, other than interest on bonds

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Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

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