

MVDCO ADVISORY SERVICES

News Letter

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Income Tax

Daga Global Chemicals – Mumbai Tribunal

Facts: There were no borrowed funds utilised to earn tax free income and that the dividend was directly credited into the bank account of the assessee. The assessee earned dividend income of Rs. 1.82 lacs whereas the AO made disallowance of Rs. 14.58 lacs by invoking section 14A.

Mumbai Tribunal held that disallowance under section 14A read with Rule 8D **cannot exceed the exempt income**. At best the disallowance can be only up to the income claimed exempt by the assessee but not exceed it.

Jignesh Shah – Bombay High Court

Facts: The assessee was 50% shareholder in Company Labin Financial Services Pvt. Ltd (LFS). LFS advanced loan to another company called NS Fincon Pvt. Ltd (NS). NS in turn gave loan to Jignesh Shah – the assessee. Jignesh Shah is not a shareholder in NS. The AO treated this loan as indirect way of loan to assessee and treated the loan amount as deemed dividend under section 2(22)(e) in the hands of assessee. The CIT(A) and Tribunal allowed the case in favour of assessee.

On appeal by the Department, **Bombay High Court** held that:

The fiscal statutes have to be interpreted strictly. The section 2(22)(e) creates a **deeming fiction** whereby it brings to tax an amount as dividend which is otherwise not a dividend. **On a strict interpretation of section 2(22)(e)**, unless the assessee is a shareholder of the Company lending him money, there should be no question of applying section 2(22)(e) of The Act.

Cooperative Housing Society – Bombay High Court

Facts: The assessee, a cooperative society received Rs. 39.68 Lacs as transfer fees from incoming and outgoing members of the society and credited the sums to 'General amenities fund' and 'repairs fund'. The AO held that the principal of mutuality does not apply. The CIT(A) and the Tribunal opined in favour of the assessee.

On appeal by the Department, the **Bombay High Court** held that the **Transfer fees received by a cooperative housing society from incoming and outgoing members is exempt** on the ground of principal of mutuality.

Compiled by: CA Malay Damania, Partner

Fees for late filing of TDS Returns

234E of The IT Act.

Non - filing or late filing of TDS returns shall invite 2 penal consequences:

1. Fee for late filing U/s 234E and
2. Penalty for late filing or non- filing of TDS statement U/s 271H.

Section 234E of the Income tax act effective from 1st July 2012 provides for levy of fee of Rs. 200/- for every day of delay in filing the statement of Tax Deducted at Source or Tax Collected at source. However, the total fee cannot exceed the amount of TDS deductible for which statement was required to be filed.

Case Law: Rashmikant Kundalia vs. UOI (Bombay High Court)

A Writ petition was filed with the Bombay High Court to challenge the validity of section 234E. The petition claimed that assesses who are deducting tax at source is discharging an administrative function of the department and that they are an “honorary agent” of the department.

It is stated that this obligation is burdensome in nature and that there are already numerous penalties prescribed for a default. It is stated that the fee now levied by section 234E is “exponentially harsh and burdensome” and also “deceitful, atrocious and obnoxious“. It is also claimed that Parliament does not have the jurisdiction or competence to impose such a levy on tax-payers.

Judgment Given By Bombay High Court

High Court dismissed the petition and gave the following judgment:

- (i) On examination of sub-section (1) of section 234E, it is clear that a fee is to be levied on a person who fails to deliver the TDS return within the prescribed time in sub-section (3) of section 200. The fee prescribed is Rs.200/- for every day during which the failure continues. It further states that the amount of fee shall not exceed the amount of tax deductible or collectible.
- (ii) As per the existing provisions, a person responsible for deduction of tax is required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter within the prescribed due date. Delay in furnishing of TDS return or

statement has a cascading effect. Delay in filing leads to the non accuracy in processing the return on whose behalf tax has been deducted until information of such deductions is furnished. **The timely processing of returns is necessary for an efficient tax administration system.** If the income tax returns, are not processed in a timely manner, then:

- a) **A delay occurs in the granting of credit of TDS** to the person on whose behalf tax is deducted and **consequently leads to delay in issuing refunds** to the deductee, or raising of defective demands against the deductee;
 - b) The confidence of a general taxpayer on the tax administration is eroded;
 - c) The late payment of refund affects the Government financially as the **Government has to pay interest for delay in granting the refunds;** and
 - d) The delay in receipt of refunds results into a **cash flow crunch**, especially for business entities.
- (iii)The legislature concluded that substantial numbers of deductors are not furnishing the TDS returns on time and this leads to an additional work burden upon the department. To compensate for the additional work burden forced upon the Department, a fee was sought to be levied under this section. **We are clearly of the view that section 234E of the Act is not punitive in nature but a fee which is a fixed charge for the extra service which the Department has to provide due to the late filing of the TDS statements.**
- (iv) A person deducting the tax are allowed to file his TDS statement beyond the prescribed time provided he pays the fee as prescribed under section 234E of the Act. The late filing of the TDS return or statements is regularized upon payment of the fee as set out in section 234E. This is nothing but a privilege and a special service to the deductor allowing him to file the TDS return beyond the time prescribed by the Act. **We therefore cannot agree with the argument as placed by the petitioners that the fee that is sought to be collected under section 234E is disguise in nature of tax.**
- (v) We do not find the provisions of section 234E as being burdensome as the section does not empower the Assessing Officer to condone the delay in late filing of the TDS return. It must be noted that a right of appeal is not a matter of right but is a creature of the statute, and if the legislature deems it fit not to provide a remedy of appeal, so be it. Even in such a scenario it is not as if the aggrieved party is left remediless. Such aggrieved person can always approach this Court by way of writ petition. We therefore cannot agree with the argument of the petitioners that simply because no remedy of appeal is provided, the provisions of section 234E are onerous.

Conclusion:

The Bombay High Court has held that the fees of Rs. 200/- per day of delay charged under section 234E for late filing of TDS returns is perfectly valid. It is therefore extremely important for all the assesseees to file their TDS return within the prescribed timelines to avoid paying the late fees.

Compiled by: Shaili Shah, Article Student

Chargeability of Interest under Section 234A of the Income-tax Act, 1961:

Interest under Section 234A of the Income-tax Act, 1961 is charged in case of default or delay in furnishing return of income by an assessee. The interest is charged at the rate of 1% per month on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS and other relief/deduction under section 90, 90A, 91 and 115JAA or 115JD of the Act.

Since self-assessment tax is not mentioned as one of the components of tax to be reduced from the amount on which interest under section 234A of the Act is chargeable, interest is being charged even on the amount of self-assessment tax paid before the due date of filing of return.

It has been held by the **Hon'ble Supreme Court in the case of CIT vs Prannoy Roy**, 309 ITR 231 (2009) that the interest under section 234A of the Act on default in 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 decided via **Circular no. 2/2015** dated 10th February 2015 that no interest under section 234A of the Act is chargeable on the amount of self-assessment tax **paid before the due date of filing of return of income.**

Example: The due date of filing return of A & Co. is 30th September, 2015. The total tax payable is Rs. 10,00,000/- of which 6,00,000 is paid out of TDS and Advance Tax. The return is filed on 31st December, 2015. The Self Assessment tax was deposited on:

- i) 25th September, 2015 – Since the Self Assessment Tax is paid before the due date of filing the return; no interest will be chargeable even though there is delay in filing the tax return.
- ii) 30th October, 2015 – Since the Self Assessment Tax is paid after the due date of filing the return; the credit for the same will still not be available and the interest under section 234A will be charged from 1st October 2015 till 31st December 2015.

Compiled by: Jagrati Kookada, Article Student

Delay in Utilization of Advance Received for Exports

- 1) As per the Foreign Exchange Management (Export of Goods and Services) Regulations, an exporter receiving an advance payment for exports from a buyer outside India shall be under an obligation to ensure that **the shipment of goods is made within the stipulated period (currently 12 months) from the date of receipt of advance payment.**
- 2) Recently, it has been observed that there is substantial increase in the number and amount of advances received for exports remaining outstanding beyond the stipulated period of twelve months on account of non-performance of such exports (shipments in case of export of goods). **Hence, the amount taken as advance takes the form of loans (i.e. external commercial borrowing) due to exports remaining outstanding beyond the stipulated period, which is violation of FEMA regulations.**
- 3) Banks are advised to **efficiently follow up with the concerned exporters** in order to ensure that export performance (shipments in case of export of goods) is completed within the stipulated time period.
- 4) RBI has instructed the banks to:
 - a) Exercise proper **due diligence and ensure compliance with KYC** and Anti Money Laundering guidelines so that **only bonafide export advances flow into India.**
 - b) **Doubtful cases as also instances of chronic defaulters** may be referred to **Directorate of Enforcement (DoE)** for further investigation.
 - c) **Stricter reporting norms** to be followed by banks for such advances.

Compiled by: Shaili Shah, Article Student

Universal Account Number (UAN) for Provident Fund

Retirement Fund body Employees Provident Fund Organization (EPFO) has been very quick in assigning Universal Account Number (UAN) to the members who are currently contributing to the Provident Fund.

What is Universal Account Number (UAN)?

Universal Account Number is a unique 12 digit portable number assigned to a member of EPFO i.e. person registered with EPFO and currently contributing to it. This UAN will become the identity of the member till his retirement.

Features and Benefits of UAN

1. UAN will make hassle free transfer of PF balance while switching jobs.
2. Employee can view PF Balance, File and View Transfer Claim Status, Download UAN Card, Update KYC norms etc.

Since UAN is to be allotted to only contributing members, all the dormant/inactive account is going to get closed.

Have you got your UAN? If not, then before reaching to your employer, first check whether you have been allotted UAN or not by EPFO.

How to Check Universal Account Number Status of Provident Fund?

Step 1: Start with clicking on the link: – <http://uanmembers.epfoservices.in/>

The above link is for employees, there is a separate link for employers: – <https://employerclaims.epfoservices.in/>

Step 2: On the upper left side, click on the blinking text “Know your UAN Status”

Step 3: Fill out the required details in the next page “Check UAN Status”

1. Select the state where your office s registered. It may be different from the state in which you work. The best way to know it is to check the first 2 letters of your PF number. The first two letters denotes the state for example RJ for Rajasthan, HR for Haryana, MP for Madhya Pradesh and UP for Uttar Pradesh.

2. Second box is for selecting the PF office region. Once again this can be confirmed by the next 3 letters of your PF number.
3. As soon as you hit enter the first two column of the next row will be filled automatically.
4. Third box should be filled with the organization number. First set of digits of your PF number denotes the organization number. You can check it with your colleagues as they should have the same the organization number.
5. In the EXT box you need to fill the extension, it may be 000 or any word letter. You can better leave it empty if it's not in your PF number.
6. The last box of A/C no. is the box where you need to put your unique PF number.

Step 4: As soon as you hit Check Status button, a message will appear that UAN is allotted or not.

Employees' Provident Fund Organisation, India
(A Statutory body under Ministry of Labour and Employment, Government of India)

Universal Account Number (UAN)
MEMBER e-SEWA

Check UAN Status

Select State* -- Select State -- -Select Office-

PF Account no. Region Office Est Code Ext A/c no

Check Status

Your UAN is allotted, kindly get your UAN No. from your employer.

This Portal can be best viewed in IE (7.0 and above), Firefox, Chrome and Opera browsers. ©2014, System powered by TCIL and VSPL

How to Get UAN from your Employer?

In case the above status shows that you have been allotted UAN number by the EPFO, than you should approach your HR asking about it.



How to activate your UAN?

Once you have got your UAN, the next step is to activate it.

1. Login into <http://uanmembers.epfoservices.in/>
2. Click on the “Activate UAN Based Registration” and check the read and understood the instructions box.

3. Enter your UAN Number, Mobile number, member id and select state and office.
4. Click on the GET PIN button after entering the case sensitive words.
5. You will then receive an authorization PIN code on your mobile.
6. Put the PIN received in the box and hit submit button to activate your UAN.

At this phase your UAN is verified and activated. On the next screen you will have to create your login credentials i.e. user name and password.

How to Download your UAN Card?

- 1 Login to <http://uanmembers.epfoservices.in/> with the username and password you have created in the above step.
 2. Hover on the download menu and click the option “Download UAN Card”.
 3. Again click on the “Download” button present on the screen. You can either take print out or save it on your computer.

In case you need any help or have any query, you may contact:

Helpdesk Number: 1800 118 005

Helpdesk Email Id: uanepf@epfindia.gov.in

Compiled by: Brajeswar Pandey, Accounts Manager

Deduction of Tax at source under The MVAT Act, 2002

Pursuant to the provisions of section 31 of the MVAT Act, 2002 (“the Act”), and Notification issued there under by the Commissioner, a dealer or any person awarding works contract, is required to deduct tax at source from the payments towards execution of such contract and has to comply with other requirements including deposit of tax so deducted into Govt. treasury, issue of certificate, maintenance of records, etc.

The relevant provisions applicable to a dealer or a person (termed as “employer”) and the contractor are briefly summarized as under:

Works Contract – Definition & meaning

S. 2(24) (b) (i):

“the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property”

Briefly, works contract is a deemed sales, wherein normally the supply of goods and materials and the labour work in respect of execution of work are involved.

Rule 40 of the MVAT Rules, 2005 provides for the tax deduction and deposits, maintenance of records, filing returns, etc.

The important relevant compliance requirements applicable to employer and contractor are broadly summarized as under :

General:

- i. Tax is required to be deducted only by a dealer or person as prescribed in the Notification and at the rate at 2% if the contractor is registered under the Act; otherwise it would be 5%. It would be deducted on the amount excluding sales tax or VAT and service tax, if any, charged by the contractor in his Invoice.

- ii. Tax shall not be deducted from inter-state works contract or works contract executed by a contractor outside the Maharashtra State.
- iii. Quantum of tax deduction shall not exceed the quantum of tax payable towards such works contract. In other words, the employer or contractee has to deduct tax at the applicable rate subject to maximum upto the tax amount charged in Invoice by contractor.
- iv. **No such deduction shall be made from any payment made to any sub-contractor by a principal contractor** where the principal contractor has assigned the execution of any works contract, in whole or in part, to the said sub contractor subject to fulfillment of prescribed conditions.
- v. Tax shall be deducted at the time of accounting the Invoice of the contractor for works contract or at the time of effecting payment towards the works contract, **whichever is earlier.**
- vi. In case of advance payment made to contractor, Tax is to be deducted only when such advance payment is adjusted against amount payable towards the works contract.
- vii. No tax shall be deducted if the contract does not involve supply of materials. In other words, the **transactions of simply labour work or job work are not covered.** The contractor can apply to the Commissioner in Form 410 to determine whether the contract is a works contract. The Commissioner is empowered to determine the transaction and accordingly, he would grant a Certificate in Form 411 to applicant contractor that no tax is to be deducted
- viii. Tax is to be deducted only if the total payment in respect of works contract to a contractor in a year **exceeds Rs. 5 lacs.**
- ix. Contractor will get tax credit for amount of tax deducted by employer or contractee and would be eligible to claim the same in the period in which the TDS certificate is furnished to him.

Obligations of employer or contractee:

- a. He shall deposit the tax, whether deducted or not, in government treasury, in Form MTR - 6, **within 21 days from the end of the month** in which tax is deductible. Failure to deduct tax or deposit thereof within the prescribed time would attract **interest at 1.25% per month** and also the penalty.
- b. He shall immediately after deduction of tax, **furnish a certificate** to the contractor in Form 402.

- c. He shall maintain register/records separately for each year in prescribed Form 404.
- d. He shall file electronically annual return in Form 405 with the prescribed VAT authorities within three months from the end of the relevant year.
- e. Employer or contractee is not required to obtain "Sales tax deduction account number" since the said requirements have been omitted w.e.f. 20th June 2006.

Obligations of contractor:

- a) He shall obtain registration under the provisions of the Act, if the prescribed limit of turnover is exceeded.
- b) He shall issue Tax Invoice in the prescribed manner and charge VAT at the rate applicable to the goods involved in execution of the works contract.
- c) He shall comply with all other provisions of the Act including filing periodical Vat returns, pay tax within the prescribed period, etc.

CASE OF SUB-CONTRACTING THE CONTRACT, FULLY OR PARTLY, TO SUB CONTRACTOR OR SUB-CONTRACTORS: S. 45(4)

In such case, the relationship between the contractor and the sub-contractor/sub-contractors shall be deemed to be that of the principal and the agent/agents

- 1. Liability to pay tax on such entire contract, shall be as such that of the principal
- 2. Liability of the Principal & the agent shall be joint & several
- 3. If the contractor pays tax on turnover effected by agent, the former should issue certificate in Form No.406 and in case of vice-versa, the agent should issue certificate in Form No. 407
- 4. If the Principal seeks deduction in respect of sub-contract, he shall obtain Declaration in Form No.408 from such sub-contractor
- 5. And if the agent/sub-contractor seeks deduction, he shall obtain Declaration in Form No.409 from the Principal Contractor.

Note : All the forms referred to hereinabove can be downloaded from the site :
www.mahavat.gov.in

Compiled by: CA Rajeev Varaiya, Partner