

## **Buyer should withhold tax from sum paid to a non-resident co-owner to acquire a house property**

**Summary – The Bangalore ITAT in a recent case of R. Prakash., (the Assessee) held that where assessee purchased a property jointly owned by co-owners, in view of fact that one of co-owners of property was a non-resident, assessee was required to deduct tax at source under section 195 to extent sale-consideration was paid to said co-owner.**

### **Facts**

- The assessee purchased a property for a total consideration of Rs. 1.20 crores. One of the co-owners of said property was a non-resident. She had given a General Power of Attorney (GPA) to other co-owner who was a resident of India.
- The resident co-owner executed the sale deed in favour of the assessee for herself and as GPA holder of non-resident co-owner.
- In the course of assessment, the Assessing Officer opined that since one of the co-owners was a non-resident, the assessee was required to deduct tax at source under section 195 while making payment of sale consideration to her.
- On assessee's failure to deduct tax at source, the Assessing Officer treated the assessee as 'assessee in default' within meaning of section 201(1).
- The Commissioner (Appeals) upheld the order of Assessing Officer.
- On second appeal:

### **Held**

- It is not in dispute that co-owners were entitled to half share each over the property that was sold to the assessee. In fact, the sale deed clearly acknowledges the receipt of sale consideration of Rs. 1.20 crore by both the vendors in equal shares. The share of each of the vendors would, therefore, be Rs. 60 lakhs. To the extent of Rs. 60 lakhs paid to non-resident co-owner, the provisions of section 195 are attracted and the assessee ought to have deducted tax at source while making payments to her.
- Therefore, it is held that the assessee can be considered as an 'assessee in default' only to the extent of Rs. 60 lakhs paid to the non-resident.
- In the result, the appeals are treated as partly allowed.