

Reimbursement of actual cost by 'KPMG' to group concern with no income element didn't require TDS

Summary – The Mumbai ITAT in a recent case of KPMG Advisory Services (P.) Ltd., (the Assessee) held that where assessee, a group company of KPMG, reimbursed actual cost incurred by KPMG on various services such as premises taken on rent, communication expenses, office space charges etc., since there was no profit element involved in payments in question, assessee was not required to deduct tax at source while making said payments

Where AO made addition to assessee's income in respect of professional service charges received from various parties only on basis of AIR information without conducting any further enquiry, impugned addition was to be set aside and, matter was to be remanded back for disposal afresh

Following order passed by Tribunal in assessee's own case relating to earlier assessment year, professional charges paid by assessee to a non-resident company located in Bangladesh could not be brought to tax in India as 'royalty' under section 9(1)(vi) and article 13(2) of India-Bangladesh DTAA

Facts

- The assessee was a group company of KPMG involved in providing professional and consultancy services. KPMG procured various services from vendors including premises on rent, communication expenses, technology cost and office space which had been shared among group companies on the basis of agreement entered into with KPMG.
- The assessee's case was that support service charges paid by it thus, was on cost to cost basis and same could not come under the purview of contractual payment within the meaning of section 194C or 194-I.
- The Assessing Officer opined that assessee made payments to KPMG on basis of contractual obligation, the assessee ought to have deducted TDS as per the provisions of section 194-I. Since the assessee failed to deduct tax at source, the Assessing Officer made disallowance under section 40(a)(i).
- The Commissioner (Appeals) confirmed said disallowance.
- On second appeal:

Held

- There is force in the argument of the assessee for the reason that as per the agreement entered into between KPMG, the assessee has agreed to share common cost like infrastructure cost, communication cost and technology cost on actual basis. The assessee has reimbursed actual cost incurred by KPMG. The KPMG has paid rent directly to landlords on the basis of rental agreements entered into between them. The said rent agreements entered into between KPMG and landlords provides for sharing premises with other group companies. KPMG also deducted tax at source

wherever applicable on rental payments. Therefore, the impugned amount paid by the assessee to KPMG is a reimbursement of actual expenditure incurred on behalf of the assessee. The assessee had reimbursed actual cost incurred by KPMG without any element of profit. Therefore, the provisions of section 194C or 194-I have no application to the impugned payments.

- In this case, there is no dispute with regard to the fact that KPMG has taken premises on rent from landlords. There is no dispute with regard to the fact that KPMG has complied with TDS provisions on such rental payments. The assessee has made the payment on the basis of agreement with KPMG which clearly states that the common cost incurred by KPMG shall be shared by group companies on cost to cost basis. Therefore, considering the facts and circumstances of the case, it is held that there is no obligation on the part of the assessee to deduct TDS on reimbursement of support service charges to KPMG. Hence, the Assessing Officer is directed to delete the disallowance made under section 40(a)(i) towards rent payments.