TAX DEDUXTION AT SOURCE – UNDER I T ACT

By

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Section – 194I

Section – 194IB

Section – 194 N

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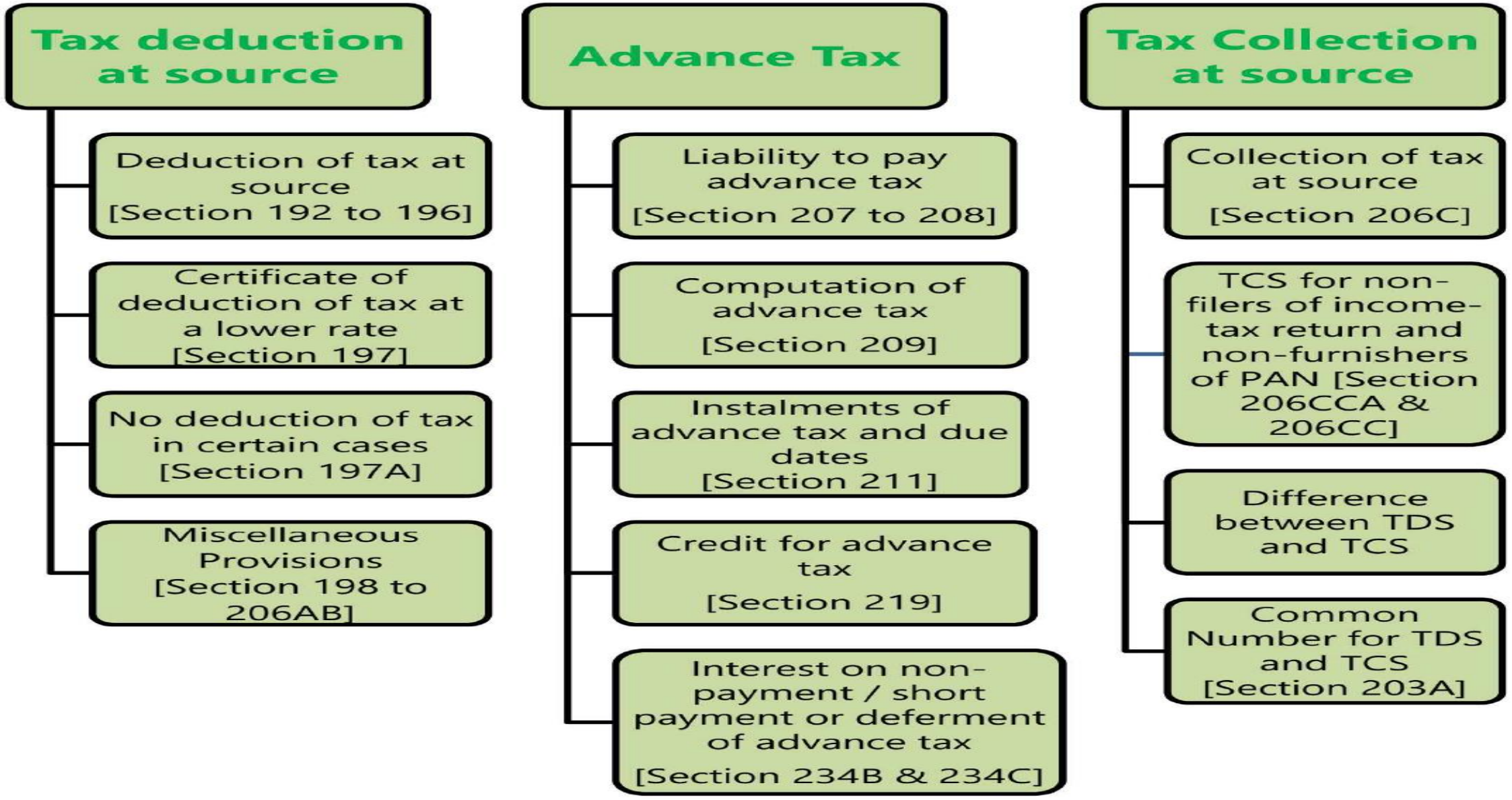
Tax deduction at source
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TDS U/s 194 I -

TDS – SECTION 194 I – Rent

Who is responsible to deduct tax:

Following persons are responsible to deduct tax at source on rent to a resident person –

- Any person, other than individual or HUF; &
- Individual or HUF whose total sales, gross receipts or turnover from business or profession carried on by him exceeding Rs.1 crore in case of business or Rs.50 lakh in case of profession during the financial year immediately preceding the financial year in which such sum is credited or paid

Note: Tax shall not be deducted if the aggregate amounts of rent credited or paid during the financial year to the payee does not exceed Rs.2,40,000.

Tax point: Where the share of each co-owner is known, the limit of Rs.2,40,000 is applicable to each co-owner separately

- Q.2. What is the point of deduction of TDS u/s 194I?
- A.2. Tax should be deducted either at the time of actual payment of rent or at the time of its credit to the account of the payee whichever is earlier.
- Q.3. What is the meaning of Rent?
- A.3. Clause (c.)of Explanation to section 194I specifies the meaning of “Rent” means any payment, by whatever name called, under any lease, sub lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,
- (a) Land; or (b) Building (including factory building); or (c.) land appurtenant to a building (including factory building); or (d) Machinery; or (e) Plant; or (f) Equipment; or (g) Furniture; or (h) Fittings, Whether or not any or all of the above are owned by the payee.

Distinction between a Fresh Claim and Revised Claim

Q.4. At what rate tax to be deducted u/s 194I? A.4.

The rates of TDS in case of rent shall be as under: Advertisement Nature of payment – Rent (194I)

(a) Rent of Plant Machinery or equipment 2%

(b) Renting of land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings 10%

(c) If PAN is not quoted 20%

Q.5. Under what circumstances there is no need to deduct TDS u/s 194I?

A.5. There is no need to deduct TDS u/s 194I under below mentioned circumstances:

- The aggregate amount paid / payable during the Financial Year doesn't exceed the threshold exemption limit i.e. doesn't exceed INR 2,40,000.
- The payer / tenant is an individual or HUF who is not liable to tax audit as per section 44 AB clause (a) or (b).
- Rent is paid / payable to a Government agency.
- Where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust
- In case, where payee applied in Form 13 to AO for non deduction, being his taxable income including rent below taxable limit, and has obtained certificate thereof.

- Q.6. Whether a contract for putting up a hoarding would be covered under section 194C or 194-I of the Act?

- A.6. The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub lets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 1 94C of the Act. Circular: No. 715, dated 8-8-1995. See also **ITO v Roshan Publicity Pvt. Ltd. (2005) 4 SOT 105 (Mum).**

- Q.7. Whether payments made to a hotel for rooms hired during the year would be of the nature of rent?
- A.7. Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I. Circular: No. 715, dated 8-8-1995.

- **Q.8. Whether the rent paid should be enhanced for notional income in respect of deposit given to the landlord?**

- A.8. The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS. Circular: No. 715, dated 8-8-1995.

- Q.9. Whether payments made by company taking premises on rent but styling the agreement as a business centre agreement would attract the provisions of section 194-I?

- A.9. The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of Explanation to section 194-I. Circular: No. 715, dated 8-8-1995.

- **Q.10. Whether in a case of a composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section .194-I of the Act would be attracted?**

- A.10. If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof. Circular: No. 715, dated 8-8-1995.
- **Q.11. Whether tax is required to be deducted at source where a non refundable deposit has been made by the tenant?**
- A.11. In cases where the tenant makes a non-refundable deposit tax would have to be deducted at source as such deposit represents the consideration for the use of the land or the building, etc., and, therefore, partakes of the nature of rent as defined in section 194-I. If, however, the deposit is refundable, no tax would be deductible at source.

- It is further clarified that if the deposit carries interest, the tax to be deducted on the amount of interest will be governed by section 1 94A of the Income-tax Act. Circular: No. 718, dated 22-8-1995

- Q.12. Whether the tax is to be deducted at source from warehousing charges?

- A.12.The term ‘rent’ as defined in Explanation (i) below section 194-I means any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any building or land.

- Therefore, the warehousing charges will be subject to deduction of tax under section 194-I. Circular: No. 718, dated 22-8-1995

- **Q.13. On what amount the tax is to be deducted at source if the rentals include municipal tax, ground rent, etc.?**

- A.13.The basis of tax deduction at source under section 194-I is “income by way of rent”. Rent has been defined, in the Explanation (i) of section 194-I, to mean any payment under any lease, tenancy, agreement, etc., for the use of any land or building.
- Thus, if the municipal taxes, ground rent, etc., are borne by the tenant, no tax will be deducted on such sum. Circular: No. 718, dated 22-8-1995

- **Q.14. Whether section 194-I is applicable to rent paid for the use of only a part or a portion of any land or building?**
- A.14. Yes, the definition of the term “any land” or “any building” would include a part or a portion of such land or building. Circular: No. 718, dated 22-8-1995

Q.15. Where accommodation in hotel rooms taken on regular basis whether tax is deductible u/s 194C or 194I?

- A.15. Where earmarked rooms are let out for a specified rate and specified period, they would be construed to be accommodation made available on ‘regular bases.
- Similar would be the case, where a room or set of rooms are not earmarked, but the hotel has a legal obligation to provide such types of rooms during the currency of the agreement.
- However, where an agreement is merely in the nature of a rate contract, it cannot be said to be accommodation ‘taken on regular basis’, as there is no obligation on the part of the hotel to provide a room or specified set of rooms. The occupancy in such cases would be occasional or casual. In other words, a rate-contract is different for this reason from other agreements, where rooms are taken on regular basis. Consequently, the provisions of section 194-I while applying to hotel accommodation taken on regular basis would not apply to rate contract agreements. Please refer Circular: No. 5/2002, dated 30-7-2002.

Q.16.How he can take credit of TDS deducted on advance rent?

- A.16. Where advance rent is spread over more than one financial year and tax is deducted thereon, credit shall be allowed in the same proportion in which such income is offered for taxation for different assessment years.
- However where rent agreement gets terminated / cancelled resulting into refund of balance amount of advance rent to the tenant. Or the rented property is transferred, credit for the entire balance of tax deducted at source, which has not been given credit so far, shall be allowed in the assessment year relevant to the financial year during which the rent agreement gets terminated / cancelled or rented property is transferred and balance of advance rent is refunded to the transferee or the tenant, as the case may be. Please refer Circular : No. 5/2001, dated 2-3-2001.

- **Q.17.Whether provisions of S. 194I shall apply in a situation where payment is made for hotel accommodation by an employee or an individual representing a company?**

- A.17. Where an employee or an individual representing a company (like a consultant, auditor, etc.) makes a payment for hotel accommodation directly to the hotel as and when he stays there, the question of tax deduction at source would not normally arise (except where he is covered under section 44AB as mentioned above) since it is the employee or such individual who makes the payment and the company merely reimburses the expenditure. Circular: No. 5/2002, dated 30-7- 2002.

- **Q.19. Whether TDS u/s 194 I deductible on gross amount inclusive of service tax / GST ?**

- A.19. Service tax paid by the tenant doesn't partake the nature of "income" of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax.
- Therefore it has been decided that tax deduction at source (TDS) under sections 194-I of Income-tax Act would be required to be made on the amount of rent paid/payable without including the service tax.
- Please refer CIRCULAR NO. 4/2008, DATED 28-4-2008 Q.20. Whether holding company is liable to deduct TDS on rent in respect of premises shared with its subsidiary?

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]

The CBDT had, vide Circular No. 1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement or contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such service tax component.

In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

- **Q.20. Whether holding company is liable to deduct TDS on rent in respect of premises shared with its subsidiary?**

- A.20. Where holding company of assessee took a premise on rent and allowed assessee to use a part of it, and there was no relationship of lessor and lessee between them, assessee had no TDS obligation under section 194- I while reimbursing a part of rent to holding company. Please refer **ACIT v. Result Services (P.) Ltd. [2012] 23 taxmann.com 93 (Delhi)**

- **Q.21. Whether TDS u/s 194 I on payments in respect of entitlement rights of assured supply of railway rakes?**

- A.21. Seconding entitlement rights of assured supply of railway rakes and receiving charges for same is not rent as defined in section 194-I and, therefore, there would be no TDS obligation. **Bonai Industrial Co. Ltd. v. Dy.CIT, [2012] 24 taxmann.com 158 (Cuttack – Trib.)**

- **Q.22. Where there are several co – owners whether threshold limit of Rs. 2,40,000/- shall be taken in to consideration in respect of each co-owner separately?**

- A.22. Where property in question leased out to a bank was owned by various co-owners and each owner was having a definite and ascertainable share in property, threshold limit for purpose of deduction of tax at source under section 194-I would apply to each of co-owners separately.

- CIT v. Senior Manager, SBI*[2012] 20 taxmann.com 40 (All.)
- CIT v. Manager, State Bank of India[2009] 226 CTR 310 (RAJ.),
- Amalendu Sahoo V ITO (2003) 264 ITR 16 (Cal),
- Orient Bank of Commerce V TDS / TRO (2006) 99 TTJ 1235 (Chd).

- **Q.23. Whether the tenant / assessee can be held as assessee in default, where the landlord duly paid the short deduction of TDS along with interest?**

- A.23. Once landlord paid amount of short deduction of TDS with interest on amount of rent, tenant / assessee could not be construed as an assesseein-default. **CIT v. Sony India (P.) Ltd.* [2012] 17 taxmann.com 126 (Kar.)**

- **Q.24. Whether TDS on Landing and parking charges is deductible u/s 194C or 194I?**
- A.24. Landing and parking charges paid by assessee-airlines to Airport Authority of India were 'rent' within meaning of provisions of section 194-I as those were payments made for use of land of airport.
  - CIT v. Japan Airlines Co. Ltd. [2010] 325 ITR 298 (Delhi)
  - CIT v Asiana Airlines (2008) 175 Taxman 177 (Del,
  - United Airlines V CIT (2006) 287 ITR 281 (Del),

However Chennai high court has given an adverse opinion in Singapore Airlines Ltd. V ITO (2006) 7 SOT 84 (Chennai).

The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and parking facility for the aircraft are for the "use of the land" by the airline company came up before the Supreme Court in Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in Singapore Airlines case and overruled the view taken by the Delhi High Court in United Airlines/Japan Airlines case.

- **Q.25. Whether provisions of S. 194I shall apply to non refundable security deposit?**

- A.25. Amount paid as security deposit under terms of lease agreement which was not refundable at the time of termination of lease.

- It could be said that said amount was in fact advance rent and as such, assessee was required to deduct tax at source from payment of such advance rent under section 194-I.

CIT v. Reebok India Co. [2007] 291 ITR 455 (Delhi)

- **Q.26. Where only land and warehouse are used and no other ser-vices are provided – Whether tax deductible u/s 194C or 194I?**

- A.26. Where only land and warehouse are used and no other ser-vices are provided, payment made is rent subject to deduction of tax at source under section 194-I of IT Act. Hindustan Coca-Cola Bev. (P.) Ltd. v. CIT [2004] 141 Taxman 60 (Delhi)

- **Q.27. Whether TDS u/s 194I is deductible on upfront fee?**

- A.27. Where the lessee paid an upfront fee against license fee for a lease covering a period of 30 years, tax is deductible at source even on such upfront fee as rent under section 194I.

TRO v Bharat Hotels Ltd. (2009) 318 ITR (AT) 244(Bom)].

- **Q.28. Whether fee for infrastructure partakes the character of Rent for the purpose of deduction of tax u/s 194I?**

- A.28. where fees collected from students were shared by assessee and it franchisees and the assessee for the purpose of its convenience, had categorized said fees shared as marketing claim and infrastructure claim. No tax is deductible on infrastructure claim u/s 194I. Please refer [CIT v NIIT Ltd. (2009) 184 Taxman 472 (Del) see also ACIT v Nib Ltd. (2008) SOT 44 (Del) (URO).

- **Q.29. Where rent paid to Co – owners separately will partake the character of rent paid to AOP?**
- A.29. No, please refer [CIT v Lally Motors (2009) 311 ITR 29 (P&H)].

- **Q.30. Whether TDS u/s 194I applies to premium payable for lease?**

- A.30. The definition of rent includes any payment by whatever name called [(CIT v Panbari Tea Co. Ltd. (1965) 57 ITR 422 (SC)]

- **Q.31. Whether hiring of storage tanks qualified either as land and building or hire charges?**
- A.31. The storage tanks in question did not qualify either as land or as building within the meaning of section 194I, what is attached to the land belongs to the land is a principle not applicable to India.
- Therefore, the structure though erected on land, could not be regarded as part of the land.

[Gulf Oil India Ltd. V ITO (2000) 75 ITD 172 (Mum)].

- **Q.32. Whether provision of S. 194I shall attract where C&F agent provides other services in addition to storage?**

- A.32. Where the terms & conditions of the agreement are such that, to reveal that the agent not only stored the goods but also rendered certain other professional services like inventory management, packing, follow up, collection, maintaining banks account of the sale proceeds, under these circumstances it could not be said that the payment made by the assessee to them was in the nature of rent.

[Eli Lilly & Co. (India) (P) Ltd. V DCIT (2006) 99 TTJ 461 (Del)].

TDS under section 194IB – Payment of Rent by certain Individual and HUF

Payment of rent by certain individuals or Hindu undivided family [Section194-IB]

(1) Applicability and Rate of TDS

Section 194-IB requires any person, being individual or HUF, other than those individual or HUF whose total sales, gross receipts or turnover from the business or profession exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession in the financial year immediately preceding the financial year in which such rent was credited or paid, responsible for paying to a resident any income by way of rent, to deduct income tax at the rate of **5%**.

(2) Threshold limit

Under this section, tax has to be deducted at source only if the amount of such rent exceeds **₹ 50,000** for a month or part of a month during the previous year.

(3) Time of deduction

This deduction is to be made at the time of credit of such rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

Payment of rent by certain individuals or Hindu undivided family [Section194-IB]

(4) No requirement to obtain TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IB.

(5) Meaning of "Rent"

"Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

(6) Deduction not to exceed rent for last month

Where the tax is required to be deducted as per the provisions of section 206AA ***or section 206AB***, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be. [Sections 206AA and 206AB providing for deduction of tax at source at a higher rate are discussed at length later on in this chapter]

Payment of rent by certain individuals or Hindu undivided family [Section194-IB]

Mr. X, a salaried individual, pays rent of ₹ 55,000 per month to Mr. Y from June, 2021. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st December, 2021?

Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

SOLUTION

Since Mr. X pays rent exceeding ₹ 50,000 per month in the F.Y. 2021-22, he is liable to deduct tax at source @5% of such rent for F.Y. 2021-22 under section 194-IB. Thus, ₹ 27,500 [₹ 55,000 x 5% x 10] has to be deducted from rent payable for March, 2022.

Payment of rent by certain individuals or Hindu undivided family [Section194-IB]

If Mr. X vacated the premises in December, 2021, then tax of ₹ 19,250 [₹ 55,000 x 5% x 7] has to be deducted from rent payable for December, 2021.

In case Mr. Y does not provide his PAN to Mr. X, tax would be deductible @20%, instead of 5%.

In case 1 above, this would amount to ₹ 1,10,000 [₹ 55,000 x 20% x 10] but the same has to be restricted to ₹ 55,000, being rent for March, 2022.

In case 2 above, this would amount to ₹ 77,000 [₹ 55,000 x 20% x 7] but the same has to be restricted to ₹ 55,000, being rent for December, 2021.

Deposit of Tax at Source

- The tax so deducted has to be deposited to the Government Account through online by any of the authorized bank branches.

- The provisions of section 203A relating to requirement of obtaining TAN No. shall not apply to a person required to deduct tax in accordance with the provisions of this section.

- In case, the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.
- Amended in Finance Act 2021- w.e.f 01.07.2021 in case tax is required to be deducted as per provision of Section 206AA (Non-furnishing of PAN) or Sec 206AB (Higher rate of TDS for non-filers) such deduction shall not exceed the rent payable for last month of previous year or last month of tenancy as case may be

Deposit of Tax at Source

- Challan-cum-statement in Form no. 26QC will have to be submitted.
- TDS certificate is to be issued in Form 16C by the person deducting tax within the specified due dates.
- TDS u/s 194IB is to be deducted only if payment is made to resident.
- In case rent is paid to non-resident owner, TDS u/s 194IB shall not be deducted.
- Tenant may be resident or non-resident. Both are liable to deduct TDS u/s 194IB.
- Rent paid by the tenant may be for residential or commercial purpose.

- TDS is to be deducted even if rent paid exceeds Rs.50,000 for only one month in a year. Example-Rent paid from April 2021 to January 2022 is Rs. 45,000 per month. Rent paid for February and March 2022 is Rs. 55,000 per month. TDS @ 5% is to be deducted on the whole amount i.e Rs. 5,60,000.

TDS under section 194LA – Payment of Compensation on Acquisition of Certain Immovable Preoperty

Payment of compensation on acquisition of certain immovable property [Section 194LA]

(1) Applicability

Section 194LA provides for deduction of tax at source by a person responsible for paying to a resident any sum in the nature of –

(i) compensation or the enhanced compensation or

(ii) the consideration or the enhanced consideration

on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land).

Immovable property means any land (other than agricultural land) or any building or part of a building.

"Agricultural land" for the purpose of this section means any land situated in India including urban agricultural land.

Payment of compensation on acquisition of certain immovable property [Section 194LA]

(2) Rate of TDS

The amount of tax to be deducted is ***10%*** of such sum mentioned in (1) above.

(3) Time of deduction

The tax should be deducted at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(4) Threshold limit

No tax is required to be deducted where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed **₹ 2,50,000**.

(5) Non-applicability of TDS under section 194LA

No tax is required to be deducted where payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

TDS on Cash Withdrawal – Section 194-N

(1) Applicability and rate of TDS

Section 194N provides that every person, being

- a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred under section 51 of that Act)
- a co-operative society engaged in carrying on the business of banking; or
- a post office

who is responsible for paying **any sum,** being the amount or aggregate of amounts, as the case may be, **in cash exceeding ₹ 1 crore during the previous year**, to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source **@2% of such sum**

TDS on Cash Withdrawal – Section 194-N

(2) Time of deduction

This deduction is to be made at the time of payment of such sum.

(3) Modification in rate of TDS and threshold limit of withdrawal for recipient who has not furnished return of income for last 3 years

If the recipient has not furnished the returns of income for all the three assessment years relevant to the three previous years, for which the time limit of file return of income under section 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made, **the sum shall mean the amount or the aggregate of amounts, as the case may be, in cash > ₹ 20 lakhs during the previous year**, and the tax shall be deducted at the rate of -

- **2%** of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash **> ₹ 20 lakhs but ≤ ₹ 1 crore**
- **5%** of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash **> ₹ 1 crore.**

However, the Central Government is empowered to specify, with the consultation of RBI, by notification, the recipient in whose case this provision shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification.

TDS on Cash Withdrawal – Section 194-N

(4) Non-applicability of TDS under section 194N

Liability to deduct tax at source under section 194N shall **not** be applicable to any payment made to –

(i) the Government

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post-office

(iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the RBI guidelines

(iv) any white label ATM operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007

TDS on Cash Withdrawal – Section 194-N

The Central Government may specify, with the consultation of RBI, by notification, the recipient in whose case section 194N shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification. Accordingly, the Central Government has, after consultation with the Reserve Bank of India (RBI), specified –

(i) **Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) –** For availing exemption from applicability of TDS u/s 194N, CRA's and franchise agents of WLATMO's should maintain a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's. Further, the WLATMO should furnish a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.

TDS on Cash Withdrawal – Section 194-N

(ii) **Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any law relating to Agriculture Produce Market of the concerned State** - For availing exemption from the applicability of TDS u/s 194N, the commission agent/trader should intimate to the banking company or co-operative society or post office, his account number through which he wishes to withdraw cash in excess of ₹ 1 crore in the previous year along with his Permanent Account Number (PAN) and the details of the previous year. Also, he should certify to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of ₹ 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce. Further, the banking company or co-operative society or post office has to ensure that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose, collect necessary evidences and place the same on record.

TDS on Cash Withdrawal – Section 194-N

(iii) (a) the authorised dealer and its franchise agent and sub-agent; and

(b) Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of -

(i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or

(ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

The exemption from the requirement to deduct tax u/s 194N would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.

"Authorised dealer" means any person who is authorised by the RBI as an authorised dealer to deal in foreign exchange [Section 10(1) of the Foreign Exchange Management Act, 1999].

TDS on Cash Withdrawal – Section 194-N

(5) ***Person to whom credit is to be given for tax deducted and paid:*** Rule 37BA provides the manner of giving credit for tax deducted and remitted to the Central Government i.e., it specifies the person to whom credit for tax deducted is to be given and also the assessment year for which the credit may be given. Accordingly, sub-rule (3A) has been inserted in Rule 37BA, to provide that, for the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.

(6) ***Furnishing particulars in case of no deduction of tax in consequence of exemption [Rule 31A]***

Every person has to furnish particulars of amount paid or credited on which tax was not deducted in view of the exemption provided in point (4) above. [Rule 31A].

Q&A

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