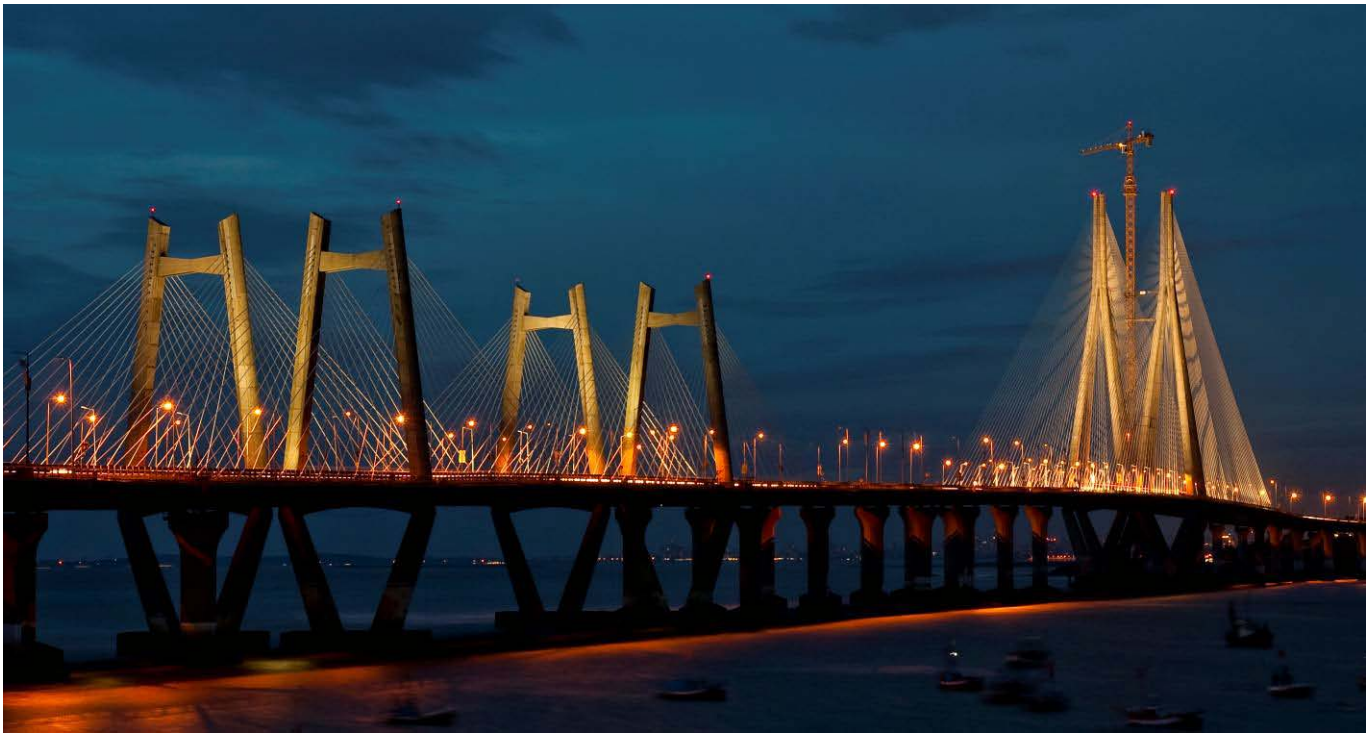


Lower withholding certificate furnished by deductee is applicable to all the units of deductor even if the units of the deductor have different TAN

8 February 2013



Background

Recently, the Punjab & Haryana High Court (the High Court) in the case of Parle Biscuits Pvt Ltd¹ (the taxpayer) held that lower withholding certificate furnished by deductee is applicable to all the units of the deductor even if such units of the deductor have different Tax Deduction Account Number (TAN).

The High Court observed that merely because the taxpayer has got separate TAN for two different units, it will not render the certificate issued under Section 197(2) of the Income-tax Act, 1961 (the Act) as redundant. Such certificate is to be issued to the Principal Officer of the Company as the person responsible for deduction of tax and not to any other person or unit of the taxpayer.

Facts of the case

- The taxpayer had given contract of executing the work to various persons, making it liable to withhold tax at the rate prescribed under Section 194C of the Act.
- Eight of the contractors, executing works for the taxpayer, furnished lower withholding certificates under Section 197(2) of the Act addressing the same to the taxpayer's Mumbai office. Subsequently, the taxpayer withheld the tax at the rates specified in the certificates.
- The Assessing Officer (AO) held that there is a short deduction of tax since the taxpayer's Mumbai office has a separate TAN than the taxpayer's Bahadurgarh office. It implies that the taxpayer's Bahadurgarh office and Mumbai office are separate entities for the purpose of deduction of tax. Consequently, the AO passed an order of raising demand against the taxpayer for the violations of Section 194C of the Act.

¹ CIT v. Parle Biscuits Pvt Ltd (ITA No. 207 of 2012 (O&M)) – Taxsutra.com

- The Commissioner of Income-tax (Appeals) [CIT(A)] held that since the genuineness of the issue of certificates under Section 197 of the Act has not been doubted by the AO, there was no justification to hold that the taxpayer was in default merely on the ground that the said certificate was not issued in the name of Bahadurgarh unit.
- The Income-tax Appellate Tribunal (the Tribunal) which was upheld the order of the CIT(A).

Issue before the High Court

Whether lower withholding certificate furnished by deductee is applicable to all the units of deductor even if units of the deductor have different TAN?

Tax department's contention

It is the responsibility of the taxpayer to withhold the tax in relation to the work executed, but since the tax was not deducted in terms of Section 194C of the Act, the order passed by the AO has been wrongly set aside by the CIT(A) and upheld by the Tribunal.

High Court's ruling

- In terms of Section 194C of the Act, any person responsible for paying any sum for carrying out any work is liable to withhold tax at the time of credit of such sum to the account of the contractor.
- Section 197 of the Act contemplates issuance of certificate to the person responsible for paying the income for deduction of tax at the rate lower than the rate prescribed under Section 194C of the Act.
- Section 204(iii)² of the Act defines the expression 'person responsible for paying' appearing in Section 194C of the Act. Further the procedure for obtaining certificate for deduction at lower rates or lower deduction of tax is prescribed under Rule 28AA of the Income Tax Rules, 1962 (the Rules).
- On reference to Rule 28AA(4) of the Rules it indicates that the said certificate issued in terms of Section 197(1) of the Act is valid only with regard to person responsible for deducting the tax and specified therein.
- On reference to Rule 28AA(5) of the Rules it indicates that the certificate shall be directed to the person responsible for deducting the tax under an advice to the person who made an application for issue of such certificate.

² The expression "person responsible for paying" means in the case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of the Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

- In terms of above said provisions, the AO of the contractors have furnished certificate under Section 197 of the Act to the Principal Officer of the taxpayer's Mumbai office.
- Such certificate is in terms of Section 204(iii) of the Act mandates the persons to whom such certificate is issued to deduct tax at a rate lower than the prescribed rate under Section 194C of the Act.
- Merely because the taxpayer has got separate TAN for Bahadurgarh unit and for Mumbai unit, it will not render the certificate issued under Section 197(2) as redundant. Such certificate is to be issued to the Principal Officer of the Company as the person responsible for deduction of tax and not to any other person or unit of the taxpayer.
- Therefore, the order passed by the CIT(A) and affirmed by the Tribunal cannot be said to be suffering from any illegality in any manner.

Our comments

This is a welcome ruling by the Punjab & Haryana High Court where it has been held that the lower/nil withholding tax certificate is issued in favour of the payer and not with respect to any individual unit of the payer and therefore the certificate should be valid for all units of the payer. This ruling will provide a relief to the taxpayers who were facing an issue with respect to receiving lower or nil withholding certificates based on the particular TAN.



www.kpmg.com/in

Ahmedabad

Safal Profitaire
B4 3rd Floor, Corporate Road,
Opp. Auda Garden, Prahlad Nagar
Ahmedabad – 380 015
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bangalore

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

4/F, Palal Towers
M. G. Road, Ravipuram,
Kochi 682 016
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Infinity Benchmark, Plot No. G-1
10th Floor, Block – EP & GP,
Sector V Salt Lake City,
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

Pune

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

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2013 KPMG, an Indian Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks of KPMG International Cooperative ("KPMG International"), a Swiss entity.