

Penny wise, pound foolish

HINDUSTAN TIMES
Tax Matters/ S.P. Babuta
Monday, August 21, 2006

DETERMINATION OF tax liability takes time, even though income is earned periodically. Like any intelligent housewife the government also now understands that it is better to make recoveries from the assessee on **as-soon-as-possible basis**. Therefore the Income tax act provides mechanism for periodic collection and recovery of taxes from income chargeable to tax, following **pay-as-you-earn principle**. Such provisions try to serve following purposes:

- prevents liquidity problem for the taxpayer at the year end,
- ensure regular flow of revenue to the government.
- Prevents the urge to unreasonably prune the tax liability due to liquidity problems and helps the assessee to remain honest.

The three methods aiming at periodic recovery of tax are:

- (1) Advance Tax
- (2) Tax Deduction at Source (TDS)
- (3) Tax Collection at Source (TCS)

TDS is one segment of Income tax act where Act, Rules, Forms, Circulars and Case laws, all have almost equal weightage in the task of appreciation of the legal and procedural aspects of the subject-matter. However, this causes the disadvantage of making the provisions quite complex and they give rise to numerous controversies/confusions/ambiguities.

The requirements under the TDS provisions are many viz.,

- correct deduction,
- timely deduction,
- timely deposit,
- timely issue of certificate,
- timely submission of quarterly return etc.

Consequences of delay/non deduction are as follows:

- **Disallowance of expense.**

Certain expenses are to be disallowed in case TDS is not deducted

eg., on interest ,

commission or brokerage ,

fees for professional services

or fees for technical services payable to a resident

or amount payable to a contractor or subcontractor being resident for carrying out work (including supply of labour for carrying out any work)

- **Interest:**

Interest @ 12% p.a. is to be charged from the date on which tax was deductible to the date of actual payment.

- **Penalty**

Penalty u/s 221 as may be levied by the A.O. which may extend upto the amount of TDS.

- **Prosecution**

Assessee shall be punishable with imprisonment which shall be between 3 months to 7 years with fine.

- **Charge on all assets**

In case where tax has not been paid after it is deducted ,then the amount of tax together with amount of simple interest thereon referred to above shall be a charge upon all the assets of the person.

Defaults may occur due to many reasons and the most common being, manpower turnover. In view of globalization there is lot of manpower turnover in every organization and lack of continuity in accounts department leads to some unintentional defaults most commonly being TDS deducted late but deposited etc.,

In cases of default in deducting/delay in deducting TDS at the first instance, the reflex action of an assessee would be to avoid deducting the tax on a later date due to fear of penalty. This would entail loss to the revenue.This can be better understood through an example:

Say Rs. 100000/- is paid as consultancy fees. Assessee forgets to deduct tax at source which comes to Rs. 5100/- .Later during the year,fearing levy of penalty he changes the nomenclature of the expense and shows this amount as reimbursement of expenses to consultant.

Effect : Tax @ 30% on Rs. 100000/- is saved by the assessee(consultant) who now shows it as reimbursement of expenses incurred on behalf of the payer. Department loses Rs. 30000/- as tax.

The above means are adopted out of fear of penalty. A little consideration in framing the notice by department(which is almost a threat letter) and a fairly mild attitude will enable the assessee to refrain from adopting such unfair means.

The reason why the law framers made interest mandatory but kept the penal provisions at the discretion of Assessing officer; has to be appreciated by the Assessing officer .The penal provisions have to be sparingly used and it should be so evident to the assessee also.

The department should charge interest on the delayed period and spare penalty in cases of delayed deduction so that the assessee has the inclination to recover and deposit TDS even in unwittingly escaped cases. Otherwise it would be a situation of being pennywise, poundfoolish.