



FOOD

TAX

ITC Ltd. Gurgaon v. Commissioner of I.T. (TDS) Delhi : TDS on tips received by hotels

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PUBLISHED 5 May 2016

Introduction

In the instant case of *ITC Ltd. Gurgaon v. Commissioner of I.T. (TDS) Delhi*,^[1] the decision revolved around the applicability of Tax Deducted at Source (“TDS”) on tips received by a hotel.

Facts of the case

The assesses were engaged in the business of owning, operating and managing hotels (“Assesses”). The tips paid by the customers were collected by the hotels and distributed to its employees at a later date. The hotel, did not deduct TDS on these tips.

The Assesses were held to be assesses-in-default under the Income Tax Act, 1961 by the Assessing Officer. The Assessing Officer held that all the tips received by the hotel and distributed to its employees fall within the purview of “salary” and hence TDS should have been deducted on these tips.

The Commissioner of Income Tax (Appeals) held that the Assesses could not be treated as assesses-in-default for non-deduction of TDS on the tips. Subsequently, appeals were filed by the Revenue Department before the Income Tax Appellate Tribunal, which were dismissed. Thereafter, appeals were preferred before the Delhi High Court.

Decision of the Delhi High Court

The High Court held that tips would amount to ‘profit in addition to salary or wages’, and thus TDS would be deductible on the same. However, the High Court distinguished tips paid directly to the employees of the hotel by cash and tips paid by credit card to the hotel. When the tips are paid directly in cash, such tips do not fall within the head of ‘salary’. In such a scenario, TDS would not be applicable. On the other hand, when the tips are paid through credit card, it goes directly to the account of the hotel, and is subsequently distributed to the employees from that account. Hence, such tips would amount to ‘salary’ and TDS would be deductible.

Aggrieved by the decision of the Delhi High Court, the Assesses approached the Supreme Court.

Decision of the Supreme Court

The Supreme Court rejected High Court’s view that when the employer pays an amount to an employee, even in a fiduciary capacity, the amount so paid would come within the head ‘salary’. The Supreme Court held that tips are received by the employer in a fiduciary capacity as trustee for payments that are received from customers which they disburse to their employees for service rendered to the customer. The payments received by the employees have no reference to the contract of employment between the employer and the employee. The employer is only acting as a conduit in a fiduciary capacity, between the customer and his employee.

Although as per the provisions of the Income Tax Act, 1961, TDS needs to be deducted even on ‘profit in addition to salary or wages’, collection of tips cannot be included within the purview of the said provision, in the absence of any reference to contract of employment.

The Supreme Court further clarified that the true character of tips cannot be treated as any payment made by the management. Although the actual payment is made by the management, the payment is not made out of hotel’s funds. Hence, payment of tips can only be regarded as a transfer of what is collected from the customer and paid to the employees of the hotel.

Thus, the Supreme Court set aside the order of the Delhi High Court and held that non-deduction of TDS on tips by the Assessee to its employees, does not contravene the provisions of the Income Tax Act, 1961.

Conclusion

Pursuant to the aforesaid judgment, TDS is not required to be deducted from the salary of the employees of hotels, while disbursing the tips collected by the hotel from its customers, since it is a voluntary payment made by the customers for the service provided by the employees of the hotel.

^[1] *Civil Appeal Nos. 4435-37 of 2016*