N. A. SHAH
BULLETIN

N. A. SHAH ASSOCIATES LLP
Chartered Accountants

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EXECUTIVE SUMMARY

- Supreme Court held that the payments made to non-resident sports association towards guarantee money in relation to matches played in India were liable to Tax at Source under section 194E as the source of income was in India. SC further held that DTAA has no application while deducting TDS u/s 194E r.w.s. 115BBA of the Act.

Supreme Court of India in case of PILCOM V. Commissioner of Income-tax - Civil Appeal No.5749 OF 2012

Facts:

1. The assessee is a PAK-INDO-LANKA JOINT MANAGEMENT COMMITTTEE ("**PILCOM"**) which is actually a Committee formed by the Cricket Control Boards/Associations of three countries viz. Pakistan, India and Sri Lanka, for the purpose of conducting the World Cup Cricket tournament for the year 1996 in these three countries.

2. International Cricket Council ("ICC") has selected India, Pakistan and Sri Lanka to Jointly Host the World Cup, 1996.

3. These three host countries were required to pay varying amounts to the Cricket Control Boards/Associations of different countries as well as to ICC in connection with conducting the preliminary phases of the tournament and also for the purpose of promotion of the game in their respective countries

4. Two bank accounts were opened by PILCOM in London to be operated jointly by the representatives of Indian and Pakistan Cricket Boards, in which receipt from sponsorship, T.V. rights etc. were deposited and from which the expenses were met.

5. Further, for the purpose of hosting the World Cup matches in India, the Board of Cricket Control of India ("BCCI") appointed its own committee known as "INDICOM" which was functioning from Calcutta.

6. From the Bank accounts in London, certain amounts were transferred to the three co-host countries for disbursement of fees payable to the umpires and referees and also defraying administrative expenses and prize money.

7. Various payments were made by PILCOM from the Bank Account in London including Guarantee money paid to certain countries which participated in world cup matches. The dispute relating to guarantee money paid to certain countries which participated in world cup matches reached to the Supreme Court.

8. During the course of enquiry, Income Tax officer issued a show cause notice stating that the provisions of section 194E shall be attracted at the time of making the above payment by PILCOM. The I.T.O. did not agree with the contentions of PILCOM and considered PILCOM as assessee in default under section 201(1) referring the provisions of section 115BBA of the Act.

9. CIT(A) has given partial relief by holding that since only 17 out of 37 matches were played in India, and payment is made for all matches played in the tournament, hence only 45.94% (i.e. 17/37) of the six payments would be attracted for default of non-deduction of TAS.

10. Aggrieved by the Order of CIT(A), both assessee and department filed an appeal before the ITAT.

11. ITAT held that Payment made by PILCOM have arisen as a result of their taking part in the cricket matches. However, cricket association of all these countries have played not only in India but in Pakistan and Sri Lanka also. Therefore, ITAT was of the view that payment made by PILCOM was liable to deduction of Tax under Section 194E only on that proportion for which it played in India.

12. Assessee preferred an appeal before the Hon'ble High Court ("HC") against the order of ITAT. HC upheld the tribunal's orders and held that, once the payment is made and received by way of a participation in any matches played in India, the non-resident assessee has to meet deduction of tax under Section 115BBA. It is significant to note that Section 194E nowhere says whether the income is chargeable to tax or not, hence, once the income accrues, tax deduction is a matter of course.

13. Further, as regards to applicability of DTAA, HC held that, although it is not argued but obligation to deduction under Section 194E is not affected by the DTAA since such a deduction is not the final payment of tax nor can be said to be an assessment of tax. Advantage of the DTAA can be pleaded

and taken by the real assessee on whose account the deduction is made and not by the payer. Accordingly, High Court held that irrespective of the existence of DTAA, the obligation under Section 194E has to be discharged once the income accrues under Section 115BBA.

14. Aggrieved by the High Court order, assessee filed an appeal before Supreme Court (SC).

Issues:

Whether any income accrued or arose or was deemed to have accrued or arisen to non-resident supports association in India on account of guarantee money for participation in world cup matches. If the answer is in the affirmative, whether PILCOM was liable for deduction of tax at source u/s 194E r.w.s. 115BBA of the Act?

Contentions of the assessee:

The payments were for grant of a privilege and not towards matches, further such payments were made in accordance with the decision of International Cricket Council in a meeting held in London, that the amounts were paid over in England. In support of its argument, assessee referred various section of the Act and various judicial pronouncement held by courts.

Contentions of the Department:

For attracting the provision of Section 115BBA of the Act, participation would not be material and what would be relevant is that the payment was for matches held in India and that in the present case, the income was deemed to accrue or arise in India.

Held:

1. Relying on various judgments of various courts, SC held that though the payments were described as Guarantee Money, they were intricately connected with the event where various cricket teams were scheduled to play and did participate in the event. The source of income, as rightly contended by the Revenue, was in the playing of the matches in India.

2. Further, the mandate under Section 115BBA(1)(b) is also clear that if the total income of a Non-resident Sports Association includes the amount guaranteed to be paid or payable to it in relation to any game or sports

played in India, the amount of income tax calculated in terms of said Section shall become payable.

3. The SC also discussed the case of **Metallurgical and Engineering Consultant (India) Ltd**. and **Manjoo and Co** and held that it had no application in the present controversy.

4. With regards to applicability of DTAA, SC confirmed the view taken by High court and held that the obligation to deduct Tax at Source under Section 194E of the Act is not affected by the DTAA and in case the eligibility to tax is disputed by the assessee on whose account the deduction is made, the benefit of DTAA can be pleaded and if the case is made out, the amount in question will always be refunded with interest.

5. Accordingly, SC upheld the HC order and held that the payments made to the Non-Resident Sports Associations in the present case represents their income which accrued or arose or was deemed to have accrued or arisen in India. Consequently, the assessee was liable to deduct Tax at Source in terms of Section 194E of the Act.

Our view

In the aforesaid decision Supreme Court was concerned with the deduction of tax at source under special provision at specific rate and not at "rates in force" under which beneficial rates prescribed under DTAA is also to be considered. Therefore, the other payments which are subject to deduction of tax at source under section 195 will continue to be governed by the guidelines laid down by the Hon'ble Supreme Court in G.E. India Technology Centre Pvt. Ltd (327 ITR 456).

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We will be glad to provide any information, elaboration and elucidation you may need in this regard.

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