Problems in Tax Deducted at Source (TDS) - Applicability, Recovery, Remittance, e-TDS Filing and Certificate Generation

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ABSRACT

Service receivers (deductor), while complying with the provisions of TDS, had to undergo myriad of problems starting from deciding applicability of TDS section up to TDS certificate generation. These logical inevitable business realities are left unheeded, resulting in misery of the tax payers as well as the taxmen.

Keywords-- Dedctor, Deductee, e-TDS & Penal provision
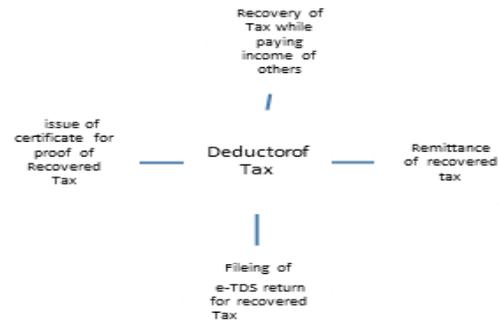
I.   INTRODUCTION

TAX DEDUCTED AT SOURCE (TDS)			
Income Tax Rules	Annual Finance Acts	Notifications/ Circulars	Court Legal Decisions

Income tax is payable by the respective individual assesses on their income as per The Income Tax Act 1961, not in arrears, but as advance tax, proportionately 4 times a year on the principle of 'pay while you earn. Tax Deduction at Source (TDS) is one such method of advance tax but, under TDS, instead of assesse, the payer of income to the assesse shall deduct a prescribed proportion and remit the same to Govt. account, file the details of deduction vide an electronic return and issue certificate to assesses for such deducted amount.

However, in practice, the TDS procedure is not simple to follow as desired in the draft. The deductor is left to undergo myriad of practical difficulties as he comes across in discharging this thankless job. Besides, the department incorporates numerous changes in law via amendments in the section, rules and change in procedures in doing the e fling.

Lets see the variety of the practical difficulties one by one.

II.   AMBIGUITY OVER APPLICABILITY OF TDS

The charging section is worded with ambiguity leaving room for debate over the applicability of the section for the intended transaction. A hard and fast rule that helps clearly decide and separate the transactions that are applicable and exclusions. For example, a seemingly same transaction attracts different compliance as below.

1. Ordering foods for 50 persons from hotel & bringing the same to our house/office.

2. Ordering foods for 50 persons ask hotel to bring to our house/office.

3. Award a catering contractor to provide foods to 100 employees in your company daily.

4. Award a catering contractor to provide foods to be prepared in our company with their materials with our infra- structure facilities.

From the above list, TDS is applicable only for Sl. nos. 2 and 4.

Likewise, in the variety of service business contracts entered, it gets really murky to ascertain whether TDS provision is applicable or not. A still more

unambiguous sections and rules and guidelines are needed in disposing off the applicability objectively.

Owing to the ambiguity surrounding the applicability of TDS, some contracts payments might escape as the deductor interprets as not applicable but the Tax man interprets as applicable, resulting in not deduction, charged with penalty for non-compliance.

Another possibility is the reverse of the above, where TDS is made for transactions that are not applicable, In this case, the plight of the deductee is dreadful.

While the former is default, and therefore, attracts penalty for non-compliance, the later is erroneous deduction that is objected by the deductee – service provider who has to prove that transaction wouldn't attract TDS to get the refund.

Like other provisions of Income tax act or various indirect taxes, there must be clarity in rules in respect of applicability of TDS is very essential.

III.   THE MAZE OF TDS RATES

After having negotiated the subjective tests of applicability, next comes the problem of fixing the Section under which the TDS is to be deducted, because rate of TDS differ from section to another. For example TDS u/s 194C is 2 % and u/s 194J it is 10 %,. Deciding applicability of relevant section is confusing some times. Few nature of TDS applicable transaction with relevant section & Tax rates:

Section	Nature of Payment	Rate
194A	Interest from bank	10
194A	Interest -other than bank	10
194C	Contractors	1
194D	Insurance commission	10
194H	Commission & Brokerage	10
194I	Rent of Land & Building	10
194IA	Rent of Mach. & Equip	2
194J	Professional/Tech/Royalty	10
194J(1)	Payment to Directors	10

One particular transaction may attract 2 % tax for one assesse, for the same transaction another assesse may attract 10 % as per TDS provisions. Hence, there is ampuguty in transaction itself and between two assesses in respect of same transaction.
Few transactions for example:
1. Conducting training class for employees of a company by a structural engineer.
2. Conducting training class for employees of a company by a painting expert.
3. Contract for cooking in factory canteen
4. Contract for cleaning in factor canteen

Both 1 & 2 are training classes, but for first transaction, applicable Tax is as per 194J i.e 10 % on Technical fees paid and for second transaction tax is as per 194C i.e 2% on fees paid.
For 3, being technical section 194 J will be applicable and for 4 bening manpower contract section 194 C is applicable.
Wrongly applied rates either excess or short will result in either
(1) Objection by deductee & claiming excess amount in case of excess deduction (or)
(2) Attract penal provision for short recovery in case of short deduction

IV.   OTHER PARAMETERS THAT HAS A BEARING ON TDS RATES

The answer to the following questions decides the TDS rate. Whether they are Corporate or Non corporate?
•   Whether they are Govt. or non Govt.?
•   Whether co-operative or Non cooperative?
•   Whether they have PAN or not?
•   Whether PAN in the name of individual name or name of enterprise etc.?

Any lapses on the above will attract penal provisions against them in the form of demand notice for one or more of the followings- Tax, penalty, penal interest

V.   REMITTANCE OF TDS TO GOVT. ACCOUNT

Remittance should be made online into the Govt. account through e-Payment, separately for each section, and within such section separately for company deductees and & non company deductees.

For example- Remittance for 194C Company deductees, 194C non-company deductees, 194J company deductees, 194J non company deductees etc. Thus, if a deductor has deducted under 5 Sections, that would require a total of 10 challans to be electronically filled and paid.

While remitting the lump sum for each of the above challans, the details about the break-ups for each dedcutee is not at all shown in the remittance. those details are with the deductor only. Those details to be known only on filing quarterly e-TDS return by the deductor. Till such time the details about the recovery are kept by deductor only. There is possibility that the same can be modified without affecting the challan amount. It is not proper.

Excepting for the Section number and deductee classification – company, non-company, the electronic form has at least 10 entries like TAN number of deductee, full address with building no, street, area, pin code that are traceable and fetch able with the TAN number are required to be filled in each and every time for every single challan, 10 times in this hypothetical case.

Further, all the above particulars are to be typed in with blistering speed. Otherwise, the network session time might lapse and the same isn't revealed instantly as it lapses but shown only on submission. Again, the details are to be fed in and re-submitted, if the luck favors the tax remitter with enough typing time.

The root cause of such session time lapse is the number of sessions the network can handle. With data redundancy for each sections / deductee type, each user will have 10 to 14 sessions in income tax portal and so many transfers to the payment portal and back, not only clogging the national tax network capacity but also, clogging the network assets of the banks facilitating e remittance. Ignorance is bliss. The lazy powerful taxmen doesn't want himself to add a little work of splitting one remittance for different sections / deductee class. They want the challans separately filled in and presented clearly in a platter. So the rat race of the tax payers is justified and necessary.

It's a vicious cycle they have created and maintain. The simple principle of data redundancy if avoided, and if all the deductor's details like address etc. are fetched and thrown from the TAN master, which incidentally they are partially doing (Name of the Deductor fetched from TAN), and if cells are assigned for each sections / class of deductees, row after row in a single page, wherein the TDS amounts of all sections could be filled in and submitted in total, all the data are captured without any compromise in one session, and also redirected to the banking portal only once.

Such a design would not only reduce the data redundancy, but also greatly improves the network availability since, the number of sessions are reduced to a fraction of the total sessions required under status quo highly data redundant design. This is a thoroughly unprofessional execution unleashing havoc and misery to the lives of all the tax abiding souls.

VI.   FILING OF E- TDS

For each such remittance, the total tax amount will comprise of recoveries from number of deductees. These deductee details should be informed through e-TDS filing along with remittance challan number & cheque number (e-payment transaction number).

Complicated and ever changing filing procedure results in various problems to Tax deductors-

Small and medium size enterprises need to outsource their filing job to authorized agency as they cannot do on their own.
(1) Ever changing data farmat, version of utility
(2) Various circumstances under which notice of fine, penalty, extra remittance etc levied on Deductor by Govt for fault / mistake of others

Nature mistake of others	Result in default of deductor
Deductee wrongly informed that he is a Company or Govt. or Individual or non-cooperative etc.	Default for non deduction or short deduction.
Deductee furnish Wrong PAN or changed PAN without informing to Deductor.	Default of non deduction or not depositing deducted amount as the case may be.
Cheque number/challan number is wrongly furnished by banker to Govt.	Default of not depositing the deducted amount.

VII.   PENALTY PROVISIONS

Default	Penalty
Failure to deduct tax	Interest @ 1 % of the Tax deductiable
Failure to deposit deducted amount	1.5 % of Tax not deposited with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years with fine
Failure to issue TDS certificate	Rs 100 every day for the period of failure continues subject to a maximum of TDS amount.

VIII.   CONCLUSIONS

Consequences of all the above problems are as follows :
1. Attracting various penal provisions to detectors.
2. Disputes between Assesses and Income tax Assessment officers.
3. More number of appeals by either assesse or department against each other.

Unnecessary burden to Assesses {deductor) while recovering income tax from others on behalf of Govt.
All the above problems may be removed by including clarity in the TDS provisions in respect of applicability & relevant rate of tax, simplified procedure in respect of remittance, e-Filing & certificate generations.

Also, the deductor (payer of income) should not be penalized for the acts /mistakes of others. They are involving in the tax collection activities on behalf of the Govt., otherwise same to be done by Govt. itself.

Tax collected through TDS, accounted for nearly 40 % of total Income Tax, it shows importance of TDS in tax collection. Hence, it is very essential to improve TDS mechanism.

REFERENCES

[1] Income Tax Act 1961 (Amended)
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