



BOM HC: No TDS U/S 195 On Grading Fees Paid To Non-Resident Parent Where Income Is Not Taxable In India; Revenue Cannot Disregard Binding ITAT Ruling

Facts of the Case:

GIA India Laboratory Private Limited ('Assessee') was engaged in the business of grading diamonds and entered into a Gem Grading Agreement with its US-based parent company, Gemological Institute of America Inc. ('GIA US'), under which it paid grading fees to GIA US. The Assessing Officer of GIA US had earlier held that GIA India constituted a Permanent Establishment ('PE') of GIA US in India and that the grading and management fees were taxable in India under the India-US DTAA.

The ITAT, however, consistently held that GIA India was an independent legal entity and did not constitute a fixed-place, service or agency PE of GIA US. Consequently, the income earned by GIA US from grading fees and management fees was held not to be chargeable to tax in India. The Bombay High Court had also upheld the Tribunal's findings for AYs 2010-11 to 2017-18. Despite these rulings, the TDS officer passed an order u/s 201 of the Income Tax Act 1961 ('Act') for AY 2020-21 treating the Assessee as an assessee-in-default for failure to deduct tax at source u/s 195 of the Act on payments made to GIA US.

Contentions of the Revenue:

The Revenue contended that the Assessee ought to have approached the Assessing Officer u/s 195(2) of the Act if it believed that tax was not deductible on the payments made to GIA US. It was further submitted that the earlier ITAT rulings had not been accepted by the Department and were subject to further challenge.

Contentions of the Assessee:

The Assessee submitted that the ITAT had already held, for the relevant AY 2020-21, that GIA US did not have a PE in India and that the grading fees were not chargeable to tax in India. Accordingly, there was no requirement to deduct tax u/s 195 or make an application u/s 195(2) of the Act. It was also contended that the TDS officer could not disregard binding appellate decisions merely because the Department proposed to challenge them.

Observations and Ruling of the Hon'ble High Court:

The Bombay High Court observed that the ITAT had examined the relevant facts and held that GIA India was an independent entity and did not constitute a fixed-place, service or agency PE of GIA US. The Court noted that these findings had also been upheld by the High Court and had not been shown to be perverse or contrary to the record.

The Court further held that subordinate authorities are bound by the decisions of the appellate forums unless their operation is stayed or suspended by a competent court. Mere non-acceptance of an ITAT ruling by the Department or pendency of an appeal does not permit the Assessing Officer to disregard such ruling. Accordingly, the TDS officer was held to have acted without authority of law in passing the section 201 order contrary to the binding decisions.



On section 195 of the Act, relying on the Supreme Court's decision in GE India Technology Centre (P.) Ltd. v. CIT, the High Court held that tax deduction u/s 195 of the Act arises only where the payment to the non-resident is chargeable to tax in India. section 195(2) applies where the payer accepts that some portion is taxable but seeks determination of the taxable amount. Since the grading fees were held not chargeable to tax in India, no TDS obligation or application u/s 195(2) arose. Accordingly, the High Court quashed and set aside the order passed u/s 201 of the Act for AY 2020-21.

Citation:

GIA India Laboratory Private Limited v. ACIT (International Taxation) [TS-1451-HC-2026(BOM)]

Our Comments:

The ruling reiterates that the obligation to deduct tax u/s 195 of the Act is attracted only when the payment to a non-resident is chargeable to tax in India. It also reinforces that subordinate tax authorities cannot disregard binding appellate decisions merely because the Revenue does not accept them or intends to challenge them. The decision is particularly relevant in cross-border payments where the taxability of the non-resident recipient has already been examined and decided by the appellate authorities.