Amendments proposed in TDS/TCS – How Far Justified?

V. P. Gupta, *Advocate*

The concept of TDS was introduced with an aim to collect tax from the very source of income. It is based on the principle "Pay as you Earn". As per this concept, when you receive payment, the tax element is deducted and directly routed to the government and what you receive is the net amount. Person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted. This is one way of collecting income tax. Benefit of TDS is that:

1. Assessee makes payment at the initial stage and in instalments and also before the money comes in his hand. It makes payment of tax easier and avoid payment of substantial amount in one go at the end of the year.

2. It helps government to collect the tax through out the year and also before end of the year and therefore, finances are available with the government at an early stage.

3. It checks evasion of tax. Since tax is deducted at source from the income, the assessee has to declare income in his return and pay proper tax.

As per Scheme of Income Tax Act liability to pay tax is on the assessee himself. As stated in Section 190 of Income Tax Act. TDS is only one mode of payment of tax. Section 190(2) and also Section 191 further makes it clear the liability to pay tax will be on the assessee notwithstanding provisions of TDS.

Provisions of Sections 192 to 196D provides for deduction of tax at source from various payments. Tax deductor is required to comply with relevant provisions strictly for deducting tax at source and tax so deducted is to be deposited in time. He has also to file required statements and issue TDS certificates to deductee. Any failure or delay attract penal consequences, which includes payment of interest, penalty and also disallowance of expenses and above all prosecution proceedings.

It is important to note that deductors are not getting any reward or benefit to provide this service to the government whereas they are incurring substantial cost in providing this thankless service.

In above background one needs to understand the justification of amendments, which are proposed to be made in Income Tax Act vide Finance Bill, 2021.

TDS on purchase of goods

Vide Finance Act 2020, sub-section (1H) was inserted in Section 206C of the Act to provide for collection of TCS by the seller. This section reads as under:

(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent.", the words "one per cent." had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

"Seller" for this purpose has been defined to mean a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out.

Above provisions had placed enormous burden on big assessee of collecting tax at source without any justification. Apartment from the fact that provisions were inserted on the basis of wrong presumption that an assessee who is buying goods of above ₹ 50 lacs from a seller having total turnover of ₹10 Crores or more will not be in tax net, provisions were introduced without taking into consideration practical aspect of the matter. Section provided for collection of tax at the time of receipt of sale consideration. It was not appreciated if amount is not charged in the bill raised, how it is possible for an assessee to collect the tax at the time of receipt of sale consideration. Many big companies had amended their accounting softwares to include tax in the invoice to be raised. It was also considered appropriate to determine limit of ₹ 50 lacs on the basis of sales made during the year. CBDT, however, without taking into consideration practical difficulties vide circular issued on 29th September, 2020, when provisions were to be implemented with effect from 1st October, 2020 clarified that TCS will be on collection and limit of ₹ 50 lacs was also to be determined with reference to payments received, including advance payments for purchase of goods made by the buyer. Implementing the provisions on the basis of receipt of sale consideration and particularly, collecting the tax at that stage is almost impossible. It is quite uncertain and unclear even now, how the companies have to comply with these provisions.

Now, the provisions on same lines are being inserted vide Section 194Q for TDS by the buyer. Section 194Q proposed to be inserted in the Act reads as under:

"194Q. (1) Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1 per cent. of such sum exceeding fifty lakh rupees as income-tax. Explanation - For the purposes of this sub-section, "buyer" means a person whose total sales, gross receipts or turnover from the

business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax.

(5) The provisions of this section shall not apply to a transaction on which-

(a) tax is deductible under any of the provisions of this Act; and

(b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.

Provisions of above section are on the same lines as were inserted last year for collection of tax at source. As per the section a buyer, purchasing goods for an aggregate amount exceeding ₹50 lakhs during the year shall be liable to deduct tax at the time of making payment there of or crediting the amount to the account of seller, at the rate of 0.1% of the sum exceeding ₹50 lakhs. The buyer has been defined to mean a person whose total sales, gross receipts or turnover during the year immediately preceding the financial year has been more than ₹10 crores. Section further provides that in case tax is deductible under any provisions of the Act, or tax is to be collected under provisions of section 206C of Income Tax Act, other than under sub-section (1H) of Section 206C of the Act, provisions of this section shall not be applicable. It means that every buyer whose turnover is more than ₹10 Crores purchasing goods from a person for an aggregate amount exceeding ₹50 lakhs is liable to deduct tax under this Section. Provisions of this section will supersede the provisions of section 206C(1H) of the Act. Meaning thereby, in a case where both the sections are applicable tax will be deductible under section 194Q of the Act.

Provisions of Section 206C(1H) were inserted and Section 194Q is proposed to be inserted in the Act with a view to widen the tax net. It is not understandable how these provisions will help in widening the tax net. Presumption that assesses, who have turnover of more than ₹10 crores, whether as buyer or seller and are buying or selling goods to an assessee of ₹50 lakhs or more would not be in tax net appears to be unreasonable, illogical, and unjustified. Such assesses would also be registered under GST. Further, assesses are also required to get their KYC updated with banks and number of other agencies from time to time and have to submit their PAN. Department has access to all the data submitted to GST Department and available

with banks and other agencies. Assesses are also required to submit PAN even for small deduction of tax at source. They would also be liable to deduct tax under other provisions of Act and therefore, would be definitely having PAN as well as TAN. They would be filing return of income also. In case, such assesses are companies, there are compulsorily required to file return. Hence, these provisions appear to be not well thought of and are without considering proper position of such assesses. Same will not serve any purpose. Amount of tax to be collected or deducted is also very small.

These provisions will also substantially increase number of transactions of TDS or TCS. Details of all transactions are required to be given in statements of TDS or TCS to be filed and same have also to be listed in Returns of income. Department is also expecting assesses to claim credit of TDS or TCS in the year in which relevant transaction has been accounted for. Giving of such details and reconciling the same will be very difficult and will unduly increase the work substantially.

Implementation of provisions of section 206C(1H) of the Act were themselves creating lot of practical problems for the assesses. Provisions of Section 194Q will further add the difficulty. It will be very difficult to determine in each case whether the buyer is liable to deduct tax under section 194Q or not before invoking provisions of section 206C(1H) of the Act by the seller.

Provisions of section 194Q are applicable in case a person who is liable to make payment for purchase of goods exceeding ₹50 lakhs. Tax is required to be deducted at the time of payment or credit of the amount to the account of the seller. Section 206C(1H) of the Act provides for collection of tax with reference to receipt of sale consideration. Hence, there is a distinction between the basis on which tax is required to be deducted under section 194Q and tax is required to be collected under section 206C(1H) of the Act. It is quite possible that purchases of buyer may exceed Rs 50 lacs in one year whereas receipt of sale consideration may exceed ₹50 lac in following year. It would mean deduction of tax on same transaction in one year whereas collection of tax on that transaction in following year.

Modifying accounting software programs on the lines of provisions appears to be challenging job. So far practical problems in keeping record and complying provisions of Section 206C(1H) have not been fully sorted out in big companies and they are trying to adopt an approach which may be favorable to department so as to avoid any penal consequences. Implementation of provisions of Section 194Q appears to be really a difficult task.

This is not a step toward ease of doing business. In fact, these provisions not only should be withdrawn, but in case of big assesses, who are regularly filing their Returns of income and complying with tax payment obligation should be exempted from TDS / TCS and any person making payment to such assesses should not be liable to deduct or collect tax at source. In order to make up collection of tax by the government such assesses may be required to make payment of advance tax on monthly basis. Amount of TDS or TCS collected by the Government in respect of such transactions will be directly paid by such assesses. This will reduce lot of work involved in TDS and TCS compliances without loss to government.

Consequences of not furnishing PAN

In relation to provisions of section 206(1H) it was provided that in case person buying the goods does not furnish PAN to seller, who is liable to collect tax, tax will be collectible at the rate of 1% instead of 0.1% in terms of section 206CC of the Act. Pursuant to proposed provisions of section 194Q of the Act it is proposed to amend provisions of Section 206AA of the Act to provide that in case seller does not provide PAN tax will be deductible at the rate of 5% instead of 0.1%. Hence, there is difference in percentage of tax required to be collected and deducted in case PAN or Aadhar Number is not submitted.

TDS/TCS at higher rate in case of non-filers of returns

By insertion of Section 206AB and 206CCA it is proposed to provide that TDS/TCS will be deducted/collected at double the rates in case the assesses, who have not filed their return for last two years and amount of TDS or TCS has been more than ₹50,000/-. It will further increase difficulty of tax deductors and before making every payment even to small assesses it would be necessary to find out whether he is covered under the provisions of above sections and tax is required to be deducted or collected at higher rate. In case TDS or TCS is being deducted or collected in the case of the assessee and amount of TDS/TCS has been ₹50,000/- or more, definitely he has been having PAN and 26AS is also available in his case at the website of the Department. Since Department has full information regarding such assesses, necessary action should be taken by the department in case they are not filing their returns rather than imposing undue burden on assesses for TDS/TCS. Hence provisions deserve to be dropped.

Further, "specified person" in whose case provisions of above section will be applicable has been defined to mean an assessee who has not filed return in respect of two assessment years relevant to two previous years immediately prior to the previous year in which tax is required to be deducted, for which time limit for filing return of income has expired. Now, say deductor has to deduct tax while making payments during the period April, 2022 to July, 2022 two previous years prior to the year are year ended 31st March, 2021 and 31st March, 2022. Return of income for year ended 31st March, 2022 is to be filed by 31st July, 2022. Then, how one can decide, whether to deduct tax at higher rate or not? Hence, definition of 'Specified person' needs to be corrected.

In the interest of simplification, the provision can be that every person in whose case tax deductible is beyond a limit, say ₹ 5000/- in specified sections, he has to submit to the deductor copy of acknowledgement for filing return for the latest assessment year for which time limit for filing return of income has expired, one month prior to the date of raising invoice for services rendered. This will ensure filing of returns in time and will simplify the procedure.

In conclusion, it is submitted that government needs to consider practical difficulties being faced by deductors and also by deductees and be reasonable while imposing tax deduction and collection obligations. Since, now all the payments and transactions are digitalized, it is necessary to look into the provisions of TDS and TCS afresh and simply the provisions and reduce the burden on assesses.

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