

TDS on loan processing fees and guarantee commission paid to banks

For every corporate, especially the ones in the mode of expansion, fund raising is inevitable and public sector banks remain the primary source of funding. For these terms loans, processing fee is also a significant chunk.

Recently, the Mumbai Tribunal had an occasion to decide as to whether TDS provisions are attracted in respect of such loan processing fees paid to the banks. The tribunal observed that even though section 2(28) of the Income Tax Act, 1961 (“the Act”) covers such processing fee within the ambit of the term ‘interest’, by virtue of explicit exclusion provided under sub-section 3 to section 194A of the Act. Sub-clause (iii)(a) of section 194A(3) envisages that provisions of section 194A(1) shall not apply to the income paid or credited to any banking company to which provisions of Banking Regulation Act, 1949 applies. Therefore the Tribunal held that no TDS u/s. 194A is required to be deducted in respect of sums paid towards service fee/loan processing fees etc., to the banks to which Banking Regulation Act, 1949 applies.

The Tribunal also held, in respect of TDS on guarantee commission paid to bankers that provisions of section 194H are not applicable since there is no Principle-Agent relationship between the payer (assessee) and the banks do not act on behalf of such assessee. CBDT Notification No. 56 of 2012 relied upon.

For complete text of the decision, refer DCIT(TDS) v. Laqshya Media (P.) Ltd. [72 taxmann.com 119 (TMum)]