

Remittance for Services Obtained from Abroad

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nature is envisaged in S 18(1) and S18(3) of the Act.

Courts have held following views related to 'settlement':

1. If a majority of the workmen have accepted a settlement and a minority have opposed or not being parties, such a settlement must be presumed to be just and fair and cannot be ignored-AIR, 1981,SC,2163,P6.
2. The settlement has to be accepted or rejected as a whole-1977, Lab IC 162, SC.
3. If two views are possible the Courts should adopt the view which is more favorable to the workers-1982-I-LLJ-173, 177(Ker).
4. A settlement arrived at by fraud or is not voluntary is not a settlement-1981-I-LLJ-367, 370(Guj)(DB).
5. Interference by way of judicial review cannot be made when majority of workmen have arrived at the settlement with management and as a result there is peace and production. If the terms of the settlement are onerous and affect the majority of the workmen, then, when this is shown, the settlement can be interfered-1987-I-LLJ-300,322.

Once a matter is referred to adjudication under S10(1) of the Act, it cannot be settled through conciliation proceedings. However, a perusal of the cases *Sirsilk Ltd vs. The Government of AP AND Amalgamated Coffee Estates Ltd vs Their Workmen*, reveals that a private settlement between the parties after having received the stamp of adjudication by the adjudicator partakes the character of an award as defined in S2(b) and peels out of the shell of the character of a settlement as defined in S2(p) and becomes binding on the parties under S18(3) instead of S18(1). Therefore this kind of settlement is identified as the third kind of agreement which acquires legal status. This is on the ground that there is nothing in the Act to prohibit a private settlement between the parties even during the course of the adjudicatory proceedings-1963-II-LLJ-647, 651-652,SC.

A checkmate is also placed by way of S 18(3) © to avoid the liability under settlements and awards by transfer of establishments.

A suit by the unregistered union related to the terms of settlement is barred. The proper remedy is to seek for industrial adjudication under the Act-1998-4-LLN-919-AP.

A 3P settlement arrived cannot be challenged by a section of the employees-1999-I-LLJ-138(Ori).

Identical disputes raised by two sets of workmen or relative unions before the same conciliation officer should be regarded as one dispute.

The Act envisages three stages in the vinculum arrow of an award or settlement:

1. Contractually or statutorily fixed period of operation.
2. After the period the settlement or award continuous to be binding, but, becomes different in its quality.
3. Stage where a notice under S19(2) OR (6) is given to terminate the award or settlement, the latter subsists as a contract, in force, till a new award or negotiated settlement takes its place.

The SC has observed that the settlement under the Act does not suffer death merely because of the notice issued under S19(2). The award even if it ceases to be operative qua award continues qua contract-1981-I-LLJ-1-SC-P178.

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Country	Act	DTAA	Applicable Rate
United States	10.3%	15%	10.3%
Italy	10.3%	20%	10.3%
United Kingdom	10.3%	15%	10.3%
Australia	10.3%	15%	10.3%
China	10.3%	10%	10%
UAE	10.3%	10%	10%

In today's world where businesses are connected beyond borders, it is common to obtain services from entities located across various countries. The services generally in the nature of technical, royalty, marketing, management and consultancy etc. The provisions of Income-tax Act, 1961(Act) requires deduction of tax at source (TDS). A certificate from chartered accountant (15CB) is required to be submitted to the bank.

Normally in such cases, TDS rates ranges from 10% to 41.2%. However, there are double taxation treaties (DTAA) with different countries wherein such rates differ. The assessee is eligible for taking advantage of the beneficial rate of DTAA or Act. The following are few instances:

In case DTAA rates are opted for, the service provider should furnish PAN, certificate of no-PE (Permanent Establishment) declaration and tax residence certificate (TRC). In the absence of PAN, the TDS rate will be 20% and not eligible for DTAA benefit. At the same time, if no-PE certificate and TRC are not obtained, the TDS will be at the rates as per the Act.

Consequences of non-compliance of above are classified as:

- a) Disallowances of the expenses, if TDS is not deducted at all.
- b) Simple Interest at 1.5 % p.m. on TDS amount.
- c) Penalties for non deduction and failure to remit.
- d) Prosecution.

However, there are cases wherein TDS rates have been decided otherwise, by the various courts. A few cases are as follows:

1. Technical services provided without transfer of technology - TDS: nil.
2. In case TRC is obtained & PAN is not available, grossing up can be done at DTAA rate and TDS has to be deducted at 20%.
3. In case of re-imbusement of expenses-TDS: nil.
4. In case of commission paid for services rendered outside India- TDS: nil.

In addition, the assessee can opt for presumptive income under section 44BBB of the Act.

To sum-up, the assessee has to define the services clearly, comply with the provisions of the Act and DTAA, and finally avail the benefit.

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