



Enroll. Refer. Earn With ICICI Bank Home Loans

ENROLL NOW

T&C apply



What do you want to learn today?

Excel, GST, Income tax etc

All Subjects

All Faculty

Demo Videos

Home / Forum / Income Tax

Google Custom Search



Enroll. Refer. Earn With ICICI Bank Home Loans



ENROLL NOW

T&C apply

Search Forum

Search

### TDS on Internet Access

Follow 3 Replies

Start a discussion Unanswered

Ranganath AAGJ (CA Final Student) 09 May 2008

Hi,

An ITAT Judgement, where in it has been held that no tax withholding (TDS) need to be made for "Internet Access Facilities".....

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH "C" : NEW DELHI

ITA No.3375/Del./2007 Asstt. Year : 2003-04

Dy CIT, CIRCLE 11(1), NEW DELHI

Vs

M/s ESTEL COMMUNICATIONS PVT LTD B-115, SARVODAYA ENCLAVE, NEW DELHI

Income Tax - AO disallows payments made for purchase of internet bandwidth - In view of the Tribunal's earlier order in the case of the same assessee whereby it was held that the payment is not towards rendering of any managerial, technical or consultancy services but merely use of Internet access facility of certain bandwidth, it cannot be disallowd u/s 40(a)(i); Such payment can also not be said to be c hargeable to tax u/s 9(1)(vii) of the Act and no TDS to be deducted u/s 195 - Revenue's appeal dismissed.

ORDER

### Popular Discussion

- 1 Preventive health check up
- 2 Salary head treatment
- 3 Interest U/s 234 C
- 4 TDS ON INTEREST PAID TO TIIC
- 5 TAXABILITY FOR NRI
- 6 Section 269SS
- 7 Late filling of return-dis-allowances of current years loss or c/f losses too

view more »

Stay updated with latest Discussion!

Enter Email

Subscribe

Per : M.A. Bakshi :

The appeal of the Revenue for A.Y. 2003-2004 is directed against the order dt. 15th May, 2007 of Id.CIT(A)-XIII, New Delhi. The only issue involved in this appeal is relating to the disallowance of payment of Rs. 3,18,21,328/- made by the assessee company towards the purchase of internet band width. The Id.counsel for the assessee filed a copy of the Delhi Bench decision of the Tribunal in assessee's own case wherein the issue relating to the similar disallowance made for A.Y. 2001-2002 has been considered and the appeal of the Revenue against the decision of CIT(A) dismissed. The Id.D.R. also agreed that the issue was decided by the Tribunal in assessee's own case for A.Y. 2001-2002 in favour of the assessee.

2. We accordingly reproduce the operative portion being para nos. 12 to 16 of the order of Tribunal in ITA 4560/Del/2003 for A.Y. 2001-2002 dt. 8.9.2006 and adopt the same for disposal of this appeal.

"12. We have considered the relevant facts, arguments advanced and the case laws cited. In the Reseller Agreement between Teleglobe International Corpn. and the assessee we find the scope of services as under:-

"2.1 Teleglobe, either directly or through its affiliates, shall provide to Reseller for resale to end user customers in the territory, on a non-exclusive basis, those Internet services as more particularly described in Annex I attached hereto and incorporated herein by reference (the 'Services'). Additional services may be added from time to time to this Agreement (upon terms and conditions to be mutually agreed upon by the Parties and to be included by adding an amended annex-I to this Agreement. Reseller understands and agrees that Teleglobe directly or through other resellers or sales agents, may also directly market the services to customers in the Territory and elsewhere.

2.2 Teleglobe shall have the right to accept or refuse, in whole or in part, any orders for services obtained by Reseller if acceptance of such orders will be in violation of any law, statute or Government policy, or if such acceptance, as determined by Teleglobe in its sole discretion, will be contrary to its business interest. In the event of such refusal, Teleglobe will advise Reseller in writing of its decision and may, at its option, provide Reseller with an explanation of the reasons for refusal in order to help Reseller detect orders which are likely to be refused in the future.

2.3. Teleglobe will endeavour to provide the Services on the date of completion of testing (the 'Service Date'), and will notify Reseller when such testing is completed."

13. There is no privity of contract between the customers of the assessee and Teleglobe Services. The assessee is to contact directly with the end user customers for the provision of services and to charge them for such services. The assessee has no authority to act on behalf of Teleglobe so as to bind it to any contract or agreement. Annexure I to the Agreement referred above provided as under: -

"Teleglobe, either directly or through its affiliates, agrees to route the Reseller's data traffic via a leased simplex or duplex circuit (the "Circuit") between Germany and the Territory for access to the Teleglobe Internet backbone through Teleglobe's Internet router provided by Teleglobe in Germany. The capacity, facilities and technical specifications of the Service are set forth below. The Service shall, as far as commercially practicable, be offered on a 24 hour per day basis, 7 days a week.

Subject to the availability of capacity, Teleglobe will provision the IP Interconnection service through simplex (one-way) International transmission facilities as follows:


Bandwidth	Facility	Rate
Speed		
1.5 Mbps - 6.0 Mbps (constant) based on Schedule for charges in Section 3.0 below 1/DVB/IP simplex	Satellite	LM-I-
3.0 Mbps - 12.0 Mbps (burstable) based on Schedule for charges in Section 3.0 below 1/DVB/IP simplex	Satellite	LM-I-

## CCI Online Courses

 **GST certification**  
Professional Course

 **Online Excel Course**  
Professional Course

 **GST Annual Return**  
Professional Course

Millions of businesses are saving money by using vehicle trackers. Are they right for you? 

**Expert Market**



The Reseller is responsible for providing a return IP path to the Internet.

## 2.0 Service Features

### 2.1 Global Routes:

Teleglobe has established connections to the major U.S. Network Access Points (NAPs) and European Internet Exchanges (Ixs) to provide direct connectivity to leading U.S. and European ISPs. At the same time Teleglobe's base of International customers provides direct and transit routes to Internet networks in Europe, Asia-Pacific, Latin America, Caribbean, Middle East, Indian Subcontinent and Africa. The Teleglobe network also includes direct high-speed connections to the U.S. Internet networks of other major Internet backbone providers. Thus Teleglobe Internet provides global Internet route coverage on either a direct or transit basis. This makes Teleglobe Internet a one-stop shop for Internet connectivity.

### Route Optimization:

Teleglobe Internet collects all available global routes from its U.S. and European peering arrangements, International customers, as well as its high speed transit connections to other key U.S. backbone providers, and optimizes them for multi-homed customers (shortest AS path).

### 2.3 Route stability:

The Service minimizes route flapping by filtering out route instability (using BGP Dampening).

### 2.4 Route Reliability:

Teleglobe's Network architecture offers diverse and redundant routing options by incorporating connections to multiple Network Access Points (NAPs) for public peering, multiple private peering partners, and direct connections to other U.S. backbones. Additionally using route registries, Teleglobe filters routing information from all customers and peers to prevent erroneous routing information from impacting its network.

### 2.5 High Performance:

Teleglobe's Internet network utilizes high-speed routers in conjunction with broadband transnational backbone links to facilitate superior performance.

### 2.6 Carrier-Grade :

All Internet network equipment is installed in carrier-grade facilities to provide superior performance and reliability.

### 2.7 Multi-Homing:

For ISPs/carriers that wish to be connected to the Service as well as another Internet provider (multi-homes), Teleglobe supports the BGP-4 dynamic routing protocol.

### 2.8 Newsfeeds:

Partial or full Usenet newsfeeds may be included at no charge within the bandwidth resources stated in Section 1.0. Over 29,000 newsgroups are currently available on a full Usenet newsfeed.

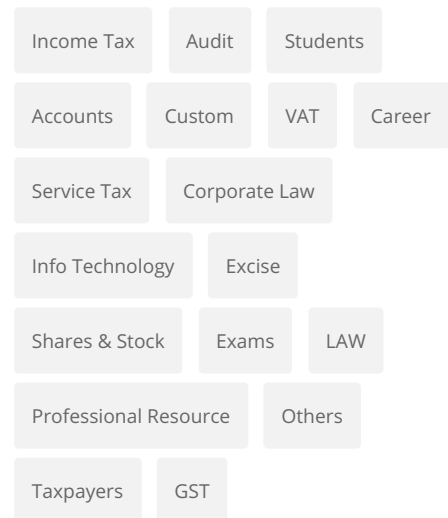
### 2.9 Network Time:

Teleglobe supports the Network Time Protocol (NTP) so customers can receive time (based on an atomic clock) from Teleglobe's routers and synchronize clocks on their network equipment.

### 2.10 DNS Services:

Backup (tertiary) DNS Service is available on an optional basis at no charge. Under this option, the customer maintains their own primary and secondary DNS servers within their network and Teleglobe offers additional secondary DNS support for select customer zones.

## Browse by Category



## 2.11 Web Reports:

Teleglobe customers can obtain various traffic statistics reports on their connection(s) via the World Wide Web using any browser software and an ID/password provided by Teleglobe. Statistics available include link utilization, link availability and packet loss."

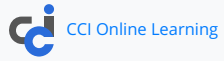
14. From the aforesaid agreement it is clear that the assessee is not paying any fees for technical services but merely for the purchase of Internet Bandwidth. Though sophisticated equipments are used and the connection of the Internet is through a Satellite link, it cannot be said that the assessee is availing technical services. It is like using a telephone line and though such telephone service provider uses sophisticated equipment, the user of such telephone line is merely paying for the calls made and not for the technical services or technology. The technology is never passed on to the assessee. As rightly held by the learned CIT(A) the issue is identical to the decision rendered by ITAT, Bangalore in the case of Wipro Ltd. (supra) to which one of us (AM) was a signatory. The Tribunal in the said case after considering agreement between an Indian assessee and US counterpart and also examining provision of Section 9(1)(vii) as well as the decision of the Madras High Court in the case of Skycells (supra) held in para 5.4 as under:-

"In the present case the assessee has paid the sum for services as set out in the agreement. As per the agreement the assessee is to use the standard facility provided as described in para 3.2 above. The agreement for provision of services in the case of AT&T is titled as Master Service Agreement. The standard format refers to menu of service which can be utilized by customers. These master agreements are available on Internet and can be downloaded by any one. The pricing patterns are standard with an offer for bulk discounts. The services referred to in the agreements are various types of telecom services which are offered to different types of customers depending upon the volume of traffic. The invoices by AT&T are charges for utilization of customer based circuits. The invoices are periodical in nature and each invoice has a different amount indicating varying volume of services utilized at various point of time. Shorn of high commercial and technical lingo in simple terms it is nothing but regular documents involved in utilization of telecom services. We find no document which evidences that the appellant was provided with any technology or technical services for encapsulation or amplification or conversion of light signal into magnetic signal or vice versa or any evidence for hiring or utilization of satellite by the appellant. The department is clearly confused on the nature of services rendered by the telecom companies to the appellant. Hence, we find no evidence to support any rendering of technical services to the appellant. The fact that the telephone service provider has installed sophisticated equipment in the exchange to ensure quality connectivity to its subscriber does not on that score make it as provision of technical service to the subscriber. The Hon'ble Madras High Court in the Skycells' decision (supra) has held that what applies to cellular mobile services is also applicable in fixed telephone service. Hence the decision applies to the present case. Further it is an undisputed fact that while uplinking the data from customers premises in India, VSNL offers similar services to the appellant. Such service is not regarded as technical services u/s 9(1)(vii) so as to attract the TDS provisions u/s 194J of the Act. Parity of reasoning demands similar treatment even if the services are provided by a private party or a non-resident. Department has no issue on the service provided by VSNL or STPI. It is inexplicable as to how the same becomes an issue when such a service is provided by a private party or a non resident. Going through the decision of ITAT Delhi 'C Bench mentioned supra, we find that when services are provided between the telecom operator and the customer the same would not amount to technical service or royalty. For these reasons we hold that the amount paid cannot be considered as 'fees for technical services' under section 9(1)(vii) in the present case."

15. In the present case also we find that the payment is not towards rendering of any managerial, technical or consultancy services but merely use of Internet access facility of a deserved bandwidth. Accordingly the payment cannot be covered as chargeable to tax u/s 9(1)(vii) of the Act. Thus the assessee was not required to deduct tax at source u/s 195 of the Act. In the absence of any tax liability u/s 195 the amount cannot be disallowed u/s 40(a)(i) of the Act. On a query from the Bench it was made clear by both counsels that no action against the assessee has been taken u/s 201 treating the assessee as "assessee in default" u/s 201 for failure to deduct tax as required u/s 195 of the Act in respect of such payment. This also supports the view that the payee is not considered as receiving any taxable income in India in respect of such payments.

16. On the basis of the above discussion and following the decision of ITAT, Bangalore, we uphold the order of learned CIT(A)." We respectfully following the above decision, which is on identical facts, dismiss the appeal of the Revenue.

3. In the result the appeal of the Revenue is dismissed.



CAclubindia Online Learning offers a wide variety of online classes and video lectures for various professional courses such as CA, CS, CMA, CISA as well as various certification courses on GST, Transfer Pricing, International Taxation, Excel, Tally, FM, Ind AS and more. know more

•\* [apoorva](#) (Article) [🕒 20 May 2010](#)

**Nice One** 👍

•\* [CA. Gurdeep Singh Chawla](#) (C A) [🕒 20 May 2010](#)

thanks for sharing

•\* [Jinit Rathod](#) (Article Assistant) [🕒 10 February 2011](#)

**Thanks**

### Leave a reply

Your are not logged in . Please login to post replies

[Click here to Login / Register](#)

[← Previous Thread](#)

[Next Thread →](#)

## Recent Topics

- ✔ ITR NOT PROCESS TILL DATE
- ✔ Real estate projects
- ✔ Penalty for without bill
- ✔ Pease answer
- ✔ ITC CREDIT ON IRON BARS FOR REPARING FACTORY
- ✔ 44AD Business or 44ADA Profession
- ✔ HSN-CODE for rate diff
- ✔ Can Inward remittance for consultancy services be
- ✔ Deduction u/s 54
- ✔ Tds offline form

[More](#) | [Post](#)

## Related Threads

- ✔ About TDS To advance payment
- ✔ About tds treatment
- ✔ When will the tds duduct by bank
- ✔ non Filing of TDS Returns
- ✔ 194B TDS is eligible for refund
- ✔ Section 194n - tds on cash withdrawal
- ✔ Refund of tds on cellular tower rental
- ✔ How to claim tds of past years
- ✔ Is TDS on advance to supplier if amount is 9539
- ✔ New tds on property rule september 1st 2019



[Articles](#)

[Forum](#)

[Career](#)

[Jobs](#)

[Video](#)

[Income Tax](#)

[News](#)

[Experts](#)

[Budget](#)

[Feed](#)

[Top Members](#)

[Rewards](#)

[GST](#)

[Scorecard](#)

[CCI Online Learning](#)

[Share Files](#)

[Bookmarks](#)

[Events](#)

[Trainee Corner](#)

[Notification](#)

[Featured](#)

[Poll](#)

[Coaching Institutes](#)

### Send me Newsletter

### Download CCI APP



### Our Newtwork Sites



