

SC Ruling-Income Tax-the TDS provisions in Chapter XVII-B relating to payment of income chargeable under the head “Salaries”, which are in the nature of machinery provisions to enable collection and recovery of tax forms an integrated Code with the charging and computation provisions under the 1961 Act, which determines the assessability/taxability of “salaries” in the hands of the employee-assessee. Consequently, Section 192(1) has to be read with Section 9(1)(ii) read with the Explanation thereto. Therefore, if any payment of income chargeable under the head “Salaries” falls within Section 9(1)(ii) then TDS provisions would stand attracted. In this batch of civil appeals, identification of the recipient of salary is not in dispute. In our view, therefore, the tax-deductor-assessee (respondent(s)) were duty bound to deduct tax at source under Section 192(1) from the Home Salary/special allowance(s) paid abroad by the foreign company, particularly when no work stood performed for the foreign company and the total remuneration stood paid only on account of services rendered in India during the period in question. As stated above, in this matter, we have before us 104 civil appeals. We are directing the AO to examine each case to ascertain whether the employee-assessee (recipient) has paid the tax due on the Home Salary/special allowance(s) received from the foreign company. In case taxes due on Home Salary/special allowance(s) stands paid off then the AO shall not proceed under Section 201(1). In cases where the tax has not been paid, the AO shall proceed under Section 201(1) to recover the shortfall in the payment of tax.