

46. It is well settled that an obligation gets discharged due to impossibility of performance. This is not the case where the assessee had mere difficulty of performance. The assessee involved senior I.R.S officials, by arranging their visit to U.K. in order to observe and help the assessee in the hearings, when the matter came before the Tribunal on February, 19th and 20th of 2000. The assessee also approached the Indian High Commissioner in U.K. to assist in getting appointments for the revenue officials who accompanied the assessee with the U.K. England Revenue authorities to discuss Caribjet tax liability. The assessee did everything possible in its control. The law of impossibility of performance does not necessarily require absolute impossibility, but also encompass the concept of severe impracticability. In our humble opinion, the doctrine of impossibility of performance applies in all fours in this case. Due to uncontrollable circumstances, the performance of the obligation to deduct tax at source and remit the same to the Government became impossible. **The impossibility of performance releases the assessee from its obligation to deduct tax at source under sec. 195 of the Act. A default occurs only when an obligation is not performed. When the assessee is released from the obligation, it cannot be said he is in default. Thus when the assessee is prevented from deducting tax u/s 195, the question of his not performing the obligation under law does not arise and thus he cannot be held a defaulter.**