

NEW TDS PROCEDURES- NOTIFICATIONS OF MARCH 2009

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OBJECT/SCOPE

*To deliberate and discuss the new TDS procedures
Amendment made vide:*

- ❖ **Notification No 28/16 March 2009** (Tax Credit Rules)- Corresponding to Section 199(3)
 - ❖ **Notification No 31/25 March 2009** (New TDS Certificates From 16/16A; TDS/TCS Challan Form 17; etc)
 - ❖ **Notification No 30/25 March 2009** (Format of CA Certificate for Non Resident Remittance in Form 15CB and submission of information FOR remittance to NR in Form No 15CA)
 - ❖ Latest Judicial Developments on TDS front
 - ❖ Latest Judicial Developments on section 68 etc
- Any Other topic, as per house's approval*

Changes at a Glance

PARTICULAR	PRIOR TO AMENDMENT	AFTER AMENDMENT
TDS Payment- by electronic mode	only corporate and persons covered under mandatory tax audit were required to make payment electronically.	Mandatory for all deductors
Challan form No.	Form no.281	Form no.17
TDS Compliance Statement	No such requirement	To be filed by all assessees who has been allotted TAN in form no. 24C

Changes at a Glance

PARTICULAR	PRIOR TO AMENDMENT	AFTER AMENDMENT
Filing of NIL return	Not mandatory	mandatory
Credit rules	No credit rules prescribed	Rule 37BA
Unique Transaction No.	Not required	Required to be mentioned in deductee wise details
eTDS Statements in Form 24C, 24Q, 26Q,27Q, 27EQ	Earlier electronic filing compulsory for only companies and Government departments. Forms were to be filed quarterly	Now electronic filing compulsory for all TDS deductors. Forms are to be filed annually.

Latest Press Release by Ministry of Finance- Welcome Clarification

*Ministry of Finance NOTIFICATION ON TDS AND TCS
18:15 IST*

- *The Board has amended the rules relating to Tax Deduction at Source (TDS) and Tax Collected at Source (TCS) vide Notification No. S.O.858 (E) dated 25th March 2009. In this context, taxpayers are informed that the new Form 17 (the challan for payment of TDS and TCS) is applicable only for payment of tax deducted or collected at source on or after 1st April 2009.*
- *Therefore, in respect of any TDS or TCS made before the 1st April, 2009, the payment will continue to be made to the credit of the Central Government by using the challan in Form No. 281 (i.e. the old challan form) even after 31st March 2009.*
- *The Central Board of Direct Taxes will shortly issue a detailed circular on the amended rules relating to TDS and TCS. BSC/BY/GN-105/09*

Snapshot of New Notifications

- ***Notification No. 31 dated 25 March 2009:***

HOW TAX DEDUCTED SHALL BE DEPOSITED

Rule 30: Tax deducted shall be deposited by electronic remittance (through Internet Banking Facility RBI/SBI/other Authorized Bank or by way of debit/credit card) and challan for the same in FORM NO 17 for the same shall be furnished electronically

ELECTRONIC PAYMENT IS MANDATORY FOR TDS AFTER 1/4/2009

Form No 17 Needs to be submitted on/before due date for making TDS payment

Snapshot of New Notifications

A POSSIBLE INFERENCE:

For making payment of TDS with Form No 17 as **apparent from Rule 30(4)**, it seems that there are two stages/steps a) Payment of TDS by electronic means b) Submission of Underlying Details of TDS in Format of Form 17 ;

As learnt from **www.saraltds.com**, it seems that while making TDS payment an entry form shall be provided and also after uploading details in Format of Form 17 along WITH TDS payment details, *an acknowledgment may be generated in FORM NO 17 :*

- a) WHICH **VALIDATES PAN** OF EACH DEDUCTEE IN YES/NO FORMAT
- B) **GENERATES A UNIQUE TRANSACTION NO/UTN** FOR EACH DEDUCTEE RECORD—REFER NEXT SLIDES

FORM NO 17 – NEW CHALLAN FOR MAKING PAYMENT OF TDS

Salient Features:

Deductee wise details along with relevant PAN details is required to be stated in Form No 17 (where no. of records > 10- deductee file is to be uploaded electronically)

There is requirement for stating whether PAN is valid or not? *It needs clarification how this validation shall be done* and in case, PAN stated by deductee is found to be invalid, whether and how far challan shall be acceptable (what shall be the tolerance limit for invalid PAN/s and not available PAN cases, needs clarification) Here following needs to be considered:

- a) In TDS Certificate Form No 16A; there is separate column for stating “total TDS amount where PAN was found valid by Income Tax Department”

FORM NO 17 – NEW CHALLAN FOR MAKING PAYMENT OF TDS

Salient Features: contd...

- b) Further, in Form No 16A replacing a) date of credit/payment; b) Corresponding TDS Payment/Challan Details c) Corresponding Bank/BSR Code details WHEREBY UNIQUE TRANSACTION NUMBER IS REFERRED – ***AGAINST WHICH IT NEEDS TO BE MENTIONED WITH EACH LINE ITEM – WHETHER DEDUCTEE PAN WAS VALIDATED IN FORM OF YES/NO BY DEDUCTOR ISSUING TDS CERTIFICATE (AT REMITTANCE OF CORRESPONDING CHALLAN)***

In new CHALLAN Form, there is no need for using separate form for making TDS PAYMENT under different provisions and single form can be used for making TDS payment under different Provisions (unlike earlier form ITNS 281)

Further, for both corporate and non corporate Payees, same Challan can be used

FORM NO 17 – NEW CHALLAN FOR MAKING PAYMENT OF TDS

Salient Features: contd...

ADVISABLE TO COLLECT AT THE TIME OF ENTERING INTO AGREEMENT/TRANSACTION COPY OF PAN CARD/PAN LETTER OF PAYEE SO THAT THERE IS NO LAST MINUTE HASSLE IN SUBMITTING CHALLAN IN FORM NO 17 (WHICH REQUIRES DEDUCTEE WISE - PAN WISE DETAILS)

IF PAN IS NOT AVAILABLE- PAYEE SHOULD BE ADVISED TO APPLY FOR PAN OR RELEVANT CONSEQUENCES SHOULD BE INTIMATED TO HIM (RELEVANT CLAUSE IN AGREEMENT IS DESIRABLE- PAYMENT/CREDIT MAY BE SUBJECT TO PAN AVAILABILITY)

FURTHER ADVISABLE TO CHECK PAN OF DEDUCTEES AT WEBPORTAL: <https://incometaxindiaefiling.gov.in/knowpan/knowpan.isp>

Due Dates for making TDS Payment- New Rule 30(1)

- All sums deducted under chapter – XVII –B (S. 192 TO 196D) should be paid:
 - *With in two months from the end of the month if the amount is credited on the last day of financial year.*
 - *In any other case, with in one week from the end of the month in which the deduction is made or income tax is due under sub section 192(1A).*
- **Change: Payment by Govt aligned with other Deductors**

Due Dates for making TDS Payment

The AO may also permit quarterly payment in **special cases** subject to prior approval of the Joint Commissioner.

- In case of tax deducted from any income chargeable under the head **"Salary"** – quarterly payments may be allowed till June 15, September 15, December 15, March 15.
- In case of **Interest other than interest on Securities, Insurance Commission, Commission or brokerage referred u/s 194H.**
 - Due dates for quarterly payments are July 15, October 15, January 15 and April 15.

UNIQUE TRANSACTION NUMBER – UTN – A CONNECTOR

- The aforesaid “UTN” which apparently gets generated at the time of filing of TDS Challan in Form No 17 (by Deductor) – Finds Mentioned in:
 - *TDS Certificates Form No 16/16A*
 - *Quarterly TDS Statement Form 24Q/26Q/27Q/27EQ etc*
 - *Newly Provided ITR Form – Sch TDS1/ TDS2*

From above, along with New TDS Credit Rules (Requiring Matching of TDS Data submitted by Deductor and Deductee) it is APPARENT that, UTN is the THREAD WHICH CONNECTS THE WHOLE TDS & ON BASIS OF WHICH TDS CREDIT SHALL BE GIVEN TO PAYEE

New TDS Certificates (Form 16A/16)

a) Form 16 – For Salaries & Form 16A – For all other payments & Form 27D – For TCS

*a) These formats may be **applicable for FY 2009-10 and above**. For 2008-09, the same earlier formats may continue as the data for new formats would be less. However a confirmation circular is expected from CBDT.*

New TDS Certificates (Form 16A/16)

However in ITR Form as latesty prescribed, in instruction Section it is stated that:

*"In **items 21 and 22**, please furnish the details in accordance with Form 16 issued by the employer(s) in respect of salary income and Form 16A issued by a person in respect of interest income. Further in order to enable the Income Tax Department to provide accurate, quicker and full credit for taxes deducted at source, the taxpayer must ensure to quote the **Unique Transaction Number (UTN)** in respect of every TDS transaction. In general the UTN would be printed on the TDS certificate issued by the deductor. However, in case it is not available on the certificate, the taxpayer should separately obtain the UTN either from the deductor or from the website of National Securities Depository Limited (NSDL) at **<http://www.tin-nsdl.com>** ."*

New TDS Certificates (Form 16A/16)

Therefore, it needs to be reconciled and clarified when new TDS procedures are applicable with effect from 1/4/2009 duly clarified in Press Release: How far (if at all) Deductor will be able to issue certificates in new FORM for TDS before 31/3/2009 and How for old transactions UTN will be generated and reported.

b) The forms should contain the information of UTN against each payment shown in TDS certificate.

UTN has to be mentioned, along with Gross amount paid and TDS amount. **Date of Payment is not required.**
That means if a party payment is shown consolidate in monthly challan, a yearly Form 16A contains only 12 entries.

c) **Form 16A is section independent. It can contain multiple section related deductions.**

New TDS Certificates (Form 16A/16)

- d) Form No 16AA has been omitted.
- e) Surprisingly, when “standard deduction, rebate available u/s 88;88B etc” are no longer available, purpose of providing space for them on New Form 16, is not understandable. Further TCS is also mentioned in Form No 16.
- f) TDS Certificate no. is introduced as internal reference no. to be given by the deductor – as an optional.
- g) Unique Transaction Number in TDS Certificate replaces:
 - i) *Ack No assigned by NSDL of Return*
 - ii) *Date of Credit/Payment*
 - iii) *Corresponding TDS Payment- Challan Details &*
 - iv) *Corresponding Bank Details*

New TDS Certificates (Form 16A/16)

- h) In Form No 16A, in substitution of separate details for Education; Surcharge etc- Only Total TDS relevant to a UTN needs to be mentioned
- i) When as per NEW Credit for TDS rules, credit for tax deducted at source shall be given on basis of/after matching of details submitted by deductor with details submitted by deductee in its return (requiring mention of UTN), Role of Duplicate/ TDS Certificates needs clarification
- j) Consolidate TDS Certificate can be issued ONLY on request of payee-deductee by deductor: Seems to be possible only where there are two TDS pertaining to two different months

Issuance of Certificate in Form No 16/ 16A – Time limit

<p><i>Situation 1 - TDS on salary under section 192 Form No 16</i></p>	<p>By April 30 after the end of the financial year</p>
<p><u><i>Situation 2 - When tax is deducted at the time of passing credit entry on the last day of the accounting year</i></u></p>	<p><u><i>Within one week from the date of deposit of TDS</i></u> (<u><i>earlier</i></u> With in a week after the expiry of two months from the in which the income is so credited.)_</p>
<p><i>Situation 3 - When prior approval is taken from the Assessing Officer to quarterly deposit tax deducted under section 192, 194A, 194D or 194H</i></p>	<p>Within 14 days from the date of deposit of TDS</p>
<p><i>Situation 4 - When deductee requests the payer to issue consolidated TDS certificate (applicable only when more than one TDS certificate is required to be given to the deductee)</i></p>	<p>By April 30 after the end of the financial year</p>
<p><u><i>Situation 5 - Any other case (also for TCS)</i></u></p>	<p><u><i>Within one month from the end of the month in which tax is deducted</i></u> (<u><i>earlier:</i></u> With in one month from the end of the month in which the income is credited or paid)</p>

TDS Returns Filing- Time Limit - Snapshot

<p>QUARTERLY TDS/TCS <u>COMPLIANCE</u> <u>STATEMENT</u> IN FORM NO 24C – <u>NEWLY</u> <u>INSERTED</u></p>	<p>TO BE <u>SUBMITTED</u> <u>QUARTERLY ON/BEFORE 15</u> <u>JULY/ 15 OCTOBER/15</u> <u>JANUARY & 15 JUNE</u></p>
<p>QUARETRLY TDS STATEMENT IN <u>EARLIER FORMS</u> <u>24Q/26Q/27Q 27EQ</u></p>	<p>TO BE SUBMITTED <u>ONCE</u> – PREPARED ON QUARTERLY BASIS – <u>ON/BEFORE 15 JUNE</u> <u>AFTER THE END OF</u> <u>RELEVANT FINANCIAL YEAR</u></p>

TDS Returns Filing- Points

NEW TDS COMPLIANCE STATEMENT PREPARED & SUBMITTED ON QUARTERLY BASIS – *CONTAINS SEPARATE DETAILS OF TAX DEDUCTION MONTH WISE IN RELEVANT QUARTER (NAMED AS SCH-COM); ALONG WITH **Challan Identification numbers/Amounts*** for monthly payments as comprised in relevant quarter (Named as SCH PAY) .

Details of TDS Compliances should contain the section wise (all) information of A) Total Payment, B) Total amount eligible for TDS, C) Total amount considered for TDS at full rate, D) Amount of TDS at full rate, e) Total amount considered for TDS at lesser rate, f) Amount of TDS at lesser rate, g) total TDS.

TDS Returns Filing- Points

Even if for a quarter there is no TDS, person holding TAN is to submit TDS Compliance statement – NIL RETURN

As APPARENT FROM Form itself, this statement is amendable to revision, however no procedure is prescribed in rules

Further, interestingly, while requiring to mention expense on which TDS is required, “capital outgo” is also included thereunder

TDS Returns Filing- Points

Deductee wise TDS details in form no 24Q/26Q ETC. is required to be given as annexure to Form 24C- it Seems that since information in annexure of 24Q etc Is given challan wise – which in turn will be monthly there may FOUR statements of each category for Each challan

One Form 24C – Contains reference to three Challan Form No 17 – Information in 24Q/26Q etc is Challan wise – hence for each statement in 24C there can be corresponding 12 Annexure for a quarter and 48 annexure for a year

TDS Returns Filing- Points

Further it needs clarification why there is separate Requirement of filing Form 24Q etc after the end of relevant financial year; when the same Form is submitted as annexure with Quarterly Form 24C

TDS Credit Rules Section 199

TDS Credit shall be given If: Rule 37BA(1) & RULE 37BA(4):

- A) TAX IS DEDUCTED AND PAID TO CREDIT OF CENTRAL GOVT AND*
- B) WHEN THE DETAILS FURNISHED BY DEDUCTOR TALLIES WITH DETAILS OF DEDUCTEE (UTN MATCHES)*
- C) RISK MANAGEMENT STRATEGY OF BOARD – TO BE SPECIFIED – VETS THE CREDIT OF TDS AS CLAIMED BY DEDUCTEE*

TDS Credit Rules Section 199

SECTION 205 OF INCOME TAX ACT – STATES THAT ONCE TAX IS DEDUCTED – NO RECOVERY OF TDS CAN BE MADE FROM DEDUCTOR IRRESPECTIVE OF ITS NON PAYMENT BY DEDUCTOR – BAR ON DIRECT RECOVERY FROM DEDUCTEE/PAYEE – ALSO STATES SO THE JUDGMENT OF :

- BHC in Yashpal Sahni 293 ITR 539
- Gau HC in Om Parkash 222 ITR 489
- Kar HC in Anusuys Alva 278 ITR 206

PRESENT TDS RULES AND SECTION 199(1) APPARENTLY VIOLATES SECTION 205 – NEEDS TO BE HARMONISED

TDS Credit Rules Section 199

ADVISABLE ON PART OF PAYEE:

- A) TO SUBSCRIBE FOR ANNUAL TAX STATEMENTS – TO VIEW TAX CREDIT
- B) TO OBTAIN/CHECK FROM DEDUCTOR TAX CHALLAN COPY - FORM NO 17 COPY (IF POSSIBLE)
- C) TO INTIMATE CORRECT PAN NO TO DEDUCTOR – BY SUBMITTING PAN CARD COPY/PAN LETTER

TDS Credit Rules Section 199

CASE STUDY:

IN CASE OF INCOME BEING TAXABLE IN HANDS OF PERSON OTHER THAN DEDUCTEE (on account of clubbing of income; on account of asset/property in name of one person-owned by two persons, asset in name of Karta of HUF & income of HUF etc)-

DECLARATION ON PLAIN PAPER REQUIRED TO BE SUBMITTED CONTAINING:

a) Name; b) Address c) PAN of the Person to Whom TAX CREDIT NEEDS TO BE GIVEN- DEDUCTOR WILL ACCORDINGLY REPORT THE SAME FOR TAX DEDUCTION IN FORM 17 ETC

Section 195 – New Procedure for Reporting Remittance to NR's

- 1) EARLIER: VIDE CBDT CIRCULAR NO 10/2002 – FOR MAKING PAYMENT TO NON RESIDENT – AN ASSESSEE WAS REQUIRED TO FURNISH TO AUTHORIZED BANK (THROUGH WHICH PAYMENT WAS MADE) A) UNDERTAKING ADDRESSED TO AO (FORWARDED BY BANK TO RBI AND FROM RBI TO REVENUE/ASSESSING OFFICER) B) ACCOMPANIED WITH CA CERTIFICATE
- 2) NOW BY NEW RULES: FOR FIRST TIME CA CERTIFICATE HAS BEEN INCORPORATED IN INCOME TAX RULES – WITH REPRODUCED FORM NO. 15CB (EFFECTIVE FROM 1/7/2009)

Section 195 – New Procedure for Reporting Remittance to NR's

FROM PRESENT INSERTION OF CA CERTIFICATE FOR FIRST TIME IN INCOME TAX RULES VIDE FORM NO 15CB, IT CAN BE SAFELY CONTENDED THAT AN ASSESSEE/PAYER CAN RELY UPON CA CERTIFICATE TO TAKE TAX WITHHOLDING POSITION ON SUBJECT NON RESIDENT REMITTANCE SPECIALLY WHEN THE SAME HAS BEEN MADE MANDATORY BEFORE MAKING ANY REPORTING IN FORM NO 15CA AND REVENUE'S LONG STAND THAT CA CERTIFICATE CANNOT REPLACE AO'S CERTIFICATE HAS BEEN DONE AWAY

Section 195 – New Procedure for Reporting Remittance to NR's

- 3) NOW BEFORE MAKING OF REMITTANCE TO A NON RESIDENT- ASSESSEE IS SUPPOSED TO:
 - A) OBTAIN CA CERTIFICATE IN FORM NO 15CB
 - B) REPORT THE DETAILS OF REMITTANCE TO REVENUE ELECTRONICALLY IN FORM NO 15CA (IRRESPECTIVE OF WHETHER SUBJECT REMITTANCE IS CHARGEABLE TO TAX OR NOT) (IT SEEMS THAT REPORTING REQUIREMENT IS REMITTANCE WISE)
- 4) SINCE FORM NO 15CA ASKS FOR PAN OF NON RESIDENT – SINCE IT IS NOT MANDATORY FOR NR'S TO OBTAIN PAN U/S 139A- PRACTICAL DIFFICULTY

Section 195 – New Procedure for Reporting Remittance to NR's

- 5) Since earlier CBDT Circular has not been withdrawn requiring filing of CA Certificate and Undertaking to Bank, it seems that present requirement is additional to earlier one.

- 6) Since there is no specific mention of filing of CA Certificate in Form 15CB with Form 15CA to Revenue in new rules, it is advisable on prudent basis that same may be annexed to it.

Latest Judicial Developments

- Supreme Court in Eli Lilly & Co.

Issue	Proposition
Penalty for non TDS u/s 271C	Is not mandatory of TDS default – in case reasonable cause is there (Nascent issue- bonafide misunderstanding of law) – NO Penalty
Interest for TDS default u/s 201/201(1A)	Is compensatory and can be levied till the time of TDS payment (by deductor or payee)

Latest Judicial Developments

- Supreme Court in Eli Lilly & Co.

Issue	Proposition
Nature of TDS liability u/ch XVII-B	Vicarious/Indirect Liability – Primary Liability of Income Earner – Must that the income is chargeable u/s 4 of the Act for TDS applicability
TDS on Salary Paid in Foreign by Foreign Co chargeable u/s 9(1)(ii)	TDS applicable u/s 192 as section 192 & section 9(1)(ii) are integrated code

Latest Judicial Developments

- Supreme Court in Eli Lilly & Co.

Issue	Proposition
Assessee in Default for Non/Shortfall in TDS u/s 201	Not Possible, in case payees discharged tax liability in their returns by the time section 201 notice comes to deductor

Latest Judicial Developments

- Supreme Court in Woodward Governor

Issue	Proposition
Whether Forex loss claimed as per AS-11 on revenue items (working capital loan etc) is allowable u/s 37?	Held Yes Since <i>the accounting method followed by an assessee continuously for a given period of time needs to be presumed to be correct till the AO comes to the conclusion for reasons to be given that the system does not reflect true and correct profits</i>

Landmark SC ruling on TDS u/s 192-L&T AND ITI CASES DT 21 JAN 2009

- Question for consideration before SC: WHETHER EMPLOYER IS UNDER OBLIGATION TO VOUCH THE DECLARATION MADE BY EMPLOYEES FOR BENEFIT U/S 10(5)?
- *Held: AN EMPLOYER IS NOT REQUIRED TO COLLECT AND EXAMINE THE SUPPORTING DOCUMENT TO DECLARATION MADE BY EMPLOYEE.*
- CBDT Yearly Circular (No.9/2008) : requires Disbursing Officers to be satisfied on genuineness of employee's claim

Landmark SC ruling on TDS u/s 192-L&T AND ITI CASES DT 21 JAN 2009

- Reasonable View may be found in MPHC in Gwalior Rayon 140 ITR 832:

While forming his opinion, the employer is undoubtedly expected to act honestly and fairly, but if it is found that estimation of employer is incorrect, this fact alone, without anything more, would not lead to adverse inference u/s 201 of the Act against the employer.

Issues on Sec 201

- SC in Hindustan Coca Cola Beverages 163 Taxman 355 on basis of CBDT Circular 275/29-1-1997 has concluded that once payee has been assessed and has deposited the tax – assessee deductor cannot be treated assessee in default (similar conclusion by MPHC in 140 ITR 818; 176 ITR 282; 140 ITR 832)
- Further issue: Whether deductor can be liable u/s 201, when it is established beyond anvil of doubt that either payee has huge brought fwd losses and/or is tax exempt entity? Albeit debatable – Fav Kol ITAT in ITC Limited 79 TTJ 14; Raj HC in 161 Taxmann 133 ; John Deers Equipment Pune ITAT (www.itatonline.org)

Issues on Sec 201

- Time Limit for taking action u/s 201 : DHC NKH Japan Broadcasting 305 ITR 137 : Held where no time limit is provided reasonable time limit to be read into the law – order u/s 201 to be passed within four years from end of relevant financial year (underlying ITAT order at 101 TTJ 292)

Issues on Sec 201

- Interest u/s 201(1A) : Whether interest can be levied on tax deductor for failure to deduct tax/ shortfall in tax deduction in following situations:
 - Where shortfall in TDS on salary has arisen due to year end bonus etc: Held No by DHC in Marubeni 294 ITR 157
 - Where payee has himself deposited self asst and advance tax in excess of TDS : Held No by : Jd ITAT in Emerald16 TTJ 904 ; Guj HC in 253 ITR 310 ; Hyd ITAT in 11 SOT 221; SC in Pranoy Roy ; Ahd ITAT in 8 SOT 475; Bang ITAT in 113 TTJ 863)

Issues on Sec 201

- Principles on sec 201(1A) : Interest Levy :
 - Cannot be charged when there is no ultimate loss to revenue because of no tax having been found payable by payee
 - Interest albeit mandatory but not penal in nature and hence compensatory
 - Asst in hands of payee either resulting in loss or refund, non deduction of tax from payment to such payees, will not attract 201(1A)

DHC in Adidas 288 ITR 379; Majestic Auto 293 ITR 185: date of tax payment by payee – endpoint for interest computation u/s 201(1A)

Penalty u/s 271C and/or Sec 221

- **ITAT in Titagarh Steels 79 ITD 532 and IDBI case 104 TTJ 230** has held that penalty u/s 221(1) is not leviable for failure to deduct tax/shortfall in TDS as section 271C is specific and will prevail over section 221 which is general in nature
- **Levy of Penalty u/s 271C is not automatic** held in DHC in Woodward 253 ITR 475 – **REASONABLE CAUSE PROTECTION AVAILABLE**
- If **Bonafide belief** is exercised by deductor – no penalty u/s 271C – DHC in Senmca 288 ITR 76

Bar on Direct Recovery Sec 205

- Once it is established (pay slip etc) that tax has been deducted at source from the income, the revenue is barred from recovering TDS portion once again from payee even though TDS is not remitted to government and TDS certificate has not been issued Revenue has to recover the amount from payer/deductor – Refer:
 - BHC in Yashpal Sahni 293 ITR 539
 - Gau HC in Om Parkash 222 ITR 489
 - Kar HC in Anusuys Alva 278 ITR 206

Thank You

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