

ITAT: No TDS liability on Uber India for 'Uber Eats' & 'Uber App' payments

Apr 27, 2023

Uber India Systems Private Limited [TS-212-ITAT-2023(Mum)]

Conclusion

Mumbai ITAT holds that Uber India (Assessee) cannot be treated as assessee-in-default for non-deduction of tax at source under Section 194C on payments made to restaurant and courier partners or driver-partners under Uber Eats and Uber App respectively on behalf of Uber B.V.; While observing that Uber Eats is a food delivery App on a similar pattern as Uber App and is a restaurant aggregator platform akin to Uber App being a ride-sharing platform, ITAT relies on coordinate bench ruling in [Assessee's own case](#) wherein it was held that the Assessee cannot be treated as a 'person responsible for paying' for the purpose of Section 194C read with Section 204 in respect of payment made to driver partners on behalf of the Uber BV for the transportation services and thus cannot be treated as assessee-in-default; Pursuant to a TDS verification survey conducted on Assessee, substantial TDS defaults were noted and order under Section 201(1)/(1A) was passed for AY 2019-20, treating Assessee as assessee-in-default and raising a demand of Rs.146.72 Cr; Revenue held that the agreement may have been signed between the driver, who is a contractor, and the specified person, which is a foreign enterprise Uber BV, but as far as the liability to deduct TDS, the same lies on the Assessee who is making the payment and since Assessee was making substantial payments to driver partners, the restaurant partners, and the courier partners without deducting tax at source, it would be treated as assessee-in-default; On appeal, CIT(A) relied on coordinate bench ruling in Assessee's own case for AY 2016-17 and 2017-18 and set aside the order under Section 201(1)/(1A); ITAT notes that during the year, assessee provided taxi services as well as food delivery services in India through its mobile application; Notes that for transportation services, Assessee is involved in the task of collecting money from the passengers for the ride, collecting the commission, and making payment to the drivers for the ride, all through the Uber App; Likewise, for food delivery services, ITAT notes that the Assessee through its Uber Eats app provides a platform that connects and acts as "three-sided marketplace" i.e., a courier partner, a restaurant owner, and a customer with the Uber Eats platform at its center, observes that the money is collected for the food and its delivery from the customer, who makes the payment to the courier partner and the amount towards delivery of food is handed over to the restaurant partner; Opines that since the Revenue could not show any reason to deviate from the ruling in Assessee's own case and no change in law was alleged to have taken place in the relevant assessment year, there is no infirmity in the order passed by CIT(A) setting aside the order under Section 201(1)/(1A); Accordingly, dismisses Revenue's appeal:ITAT Mum

Decision Summary

The ruling was delivered by the Division Bench of Mumbai ITAT comprising Shri Prashant Maharishi, Accountant Member and Shri Sandeep Singh Karhail, Judicial Member.

Mr. Hiten Chande appeared for the Assessee while the Revenue was represented by Mr. Ankush Kapoor.

Case Law Information

Taxpayer Name

- Uber India Systems Private Limited

Judicial Level & Location

- Income tax Appellate Tribunal Mumbai

Appeal Number

- ITA no.126/Mum./2023

Date of Ruling

- 2023-04-26

Ruling in favour of

- Assessee

Section Reference Number

- [194C](#)
- 201(1)

Nature of Issue

- TDS proceedings
- TDS u/s 194C

Judges

- Prashant Maharishi, Accountant Member
- Sandeep Singh Karhail, JM

Counsel for Tax Payer

- Mr.Hiten Chande

Counsel for Department

- Ankush Kapoor