

Tax Hotline

April 26, 2002

INDIAN TRIBUNAL RULES ON AVAILABILITY OF TREATY TAX RATES UPON FILING OF TAX RETURNS

In a recent judgement, the Mumbai Income Tax Appellate Tribunal (“**Tribunal**”) has held that in order that a foreign company can claim the benefit of tax rates prescribed in the Double Taxation Avoidance Agreement (“**DTAA**”) between its country of residence and India, it must file a tax return in India and get itself assessed by the Indian Income Tax department (“**I-T department**”). The Indian resident, making remittance to the foreign company cannot apply the treaty tax rates for withholding tax at source.

In a case between I-T Department and Poysha Industrial, Mumbai (“**taxpayer**”), the taxpayer made an interest payment to a German company and two UK based companies, deducting tax at the rate of 15% and 10% respectively, being the tax rates under the respective DTAA. The assessing officer disputed the rate and observed that the appropriate rate for deduction of tax would be 30%. The assessing officer was of the view that the provisions of the tax treaty would come into play later and not when tax is deducted at source. He therefore directed the taxpayer to pay the shortfall. The Tribunal agreed with the assessing officer’s views and ordered the taxpayer to pay the shortfall.

Source: *The Economic Times*, April 26, 2002.

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