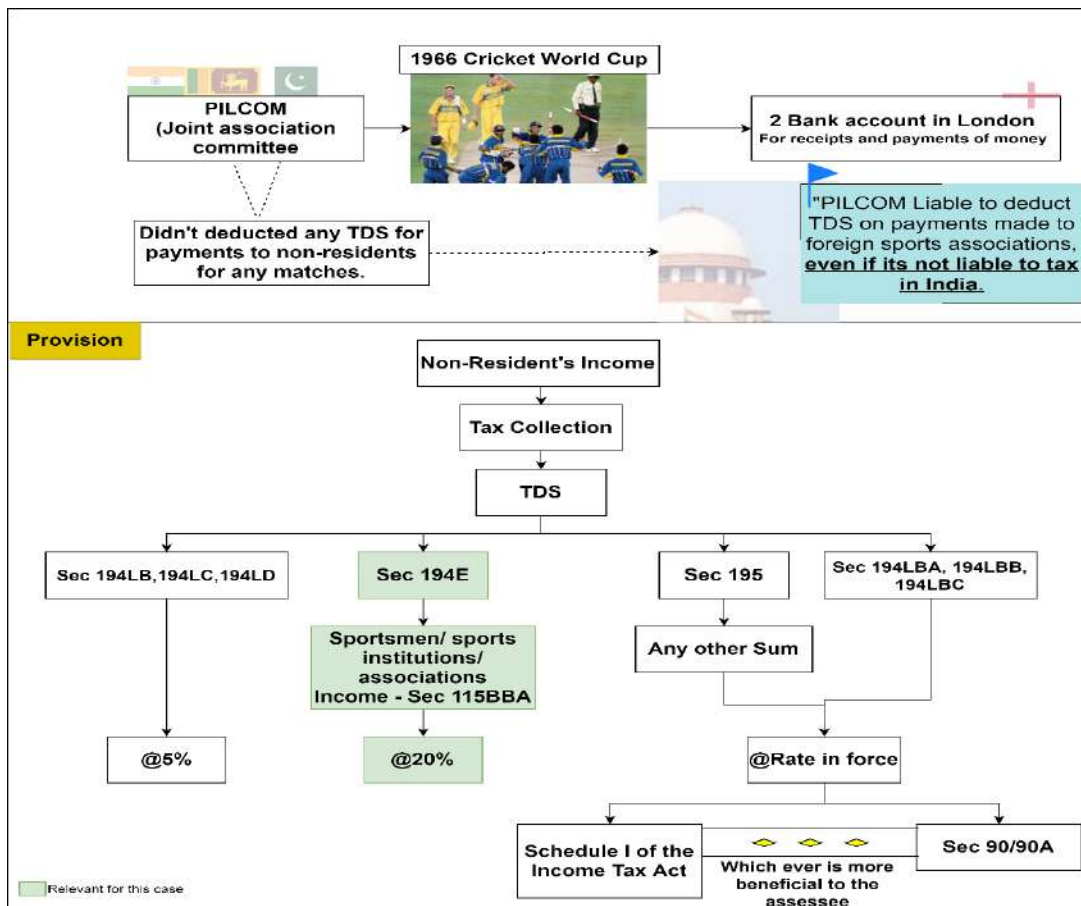


**SATURDAY INTERNATIONAL TAX GYAN !!!**  
#taxmadeeasy

**PILCOM v. Commissioner of Income-tax, West Bengal-VII<sup>1</sup>**

**Income covered under section 115BBA cannot claim benefit of DTAA at the time of tax deduction**



**Facts:**

- PILCOM was a committee formed by cricket board's of 3 countries i.e. India, Pakistan and Sri Lanka to carry out the 1996 Cricket world cup matches in all the three countries.
- PILCOM had opened two bank accounts in London to collect advertisement and sponsorship money and then use it to incur expenses related to the event. The surplus was used to distribute prize money and to the three countries organizing it.
- PILCOM had made seven types of payments as per the terms of the agreement, to NRSA as well as to the ICC without deducting tax at source.

<sup>1</sup> [2020] 271 Taxman 200 (SC)

## Assessee's contention:

- Assessee contended that out of the total amount, one of the component i.e. guarantee fees was paid to the participants outside India who did not participate in the world cup and rest of the amount was also paid to the cricket board outside India from the bank account situated outside India and hence no Income was liable to be taxed in India, therefore the assessee has not withhold any tax amount.

## Revenue's contention:

- During the course of assessment it came to the notice of the Income tax department payment from such account was made to different member countries of ICC and TDS on same was required to be deducted by assessee u/s 194E as payment to non-resident sportsmen and sports association.
- Also the benefit of DTAA cannot be claimed by the assessee u/s 194E, as not specifically provided in this section unlike provided in section 195.

## Ruling:

- It was held that not all the income would be liable to TDS u/s 194E and tax in India would be levied on only those income which is related to the matches played in India by virtue of section 115BBA.
- The HC further held that it is significant to note that sec 115BBA read with section 194E nowhere states that the income should be chargeable to tax for the purpose of withholding tax. It therefore concluded that once the income of such non-resident accrues in India, tax deduction is to be made.
- Further, as regards DTAA it was held by the High court as well Hon'ble Supreme court that the benefit of DTAA will not be considered u/s 194E. Also, if it was pleaded it won't affect the tax deduction as TDS is not the final tax payment. Advantage of DTAA can be taken by the deductee at the time of filing his return of income and refund of such credit can be taken.

## Our comments:

- Difference between sec 194E & 195.
  - Sec 194E specifically deals for any income referred in sec 115BBA, payable to non-residents being sportsmen or sports association, TDS would be deducted @20%.
  - Section- 195: is for any other sum payable to non-residents will be chargeable to tax at the rate in force.
  - Sec 2(37A) "rate or rates in force" or "rates in force" in relation to an assessment year or financial year, means—
    - (i).....
    - (ii).....
    - (iii) for the purposes of deduction of tax under section 194LBA or section 194LBB or section 194LBC or section 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or the rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90, or an agreement notified by the Central Government under section 90A, whichever is applicable by virtue of the provisions of section 90, or section 90A, as the case may be;



From the above provisions, it is clear that withholding u/s 195 of the act has to be done as per the following:

- Rate in force given in Schedule I of the Finance Act. Or
- Rate specified in DTAA.

Whichever is beneficial.

**A small bifurcation of the sections for which DTAA benefit for TDS deduction is available or not is as follows:**

	DTAA benefit available	DTAA benefit not available
<b>Sections</b>	<b>194LBA, 194LBB, 194LBC or 195</b>	<b>194LB,194LC,194LD,194E</b>

Therefore, CBDT should come up with clarification regarding opting DTAA benefit for other sections too, As non-resident will have to file return for just collecting refund of additional tax deduction.

<b>Section</b>	<b>194E, 115BBA</b>
<b>Court</b>	<b>Supreme Court</b>
<b>Date of decision</b>	<b>29.04.2020</b>

**Note:** Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

Visit our website blog- <https://jainshrimal.com/topic/saturday-international-tax-gyan/> for previous case laws.

Disclaimer: This document has been prepared on the basis of information available in the public domain and is intended for guidance purposes only. We have taken reasonable care to ensure that the information in this document is accurate. It, however, accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this document.

**Stay Healthy! Stay Safe!**

**Thank you**

