

# SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No.  
177

## Ingram Micro Inc Vs DCIT

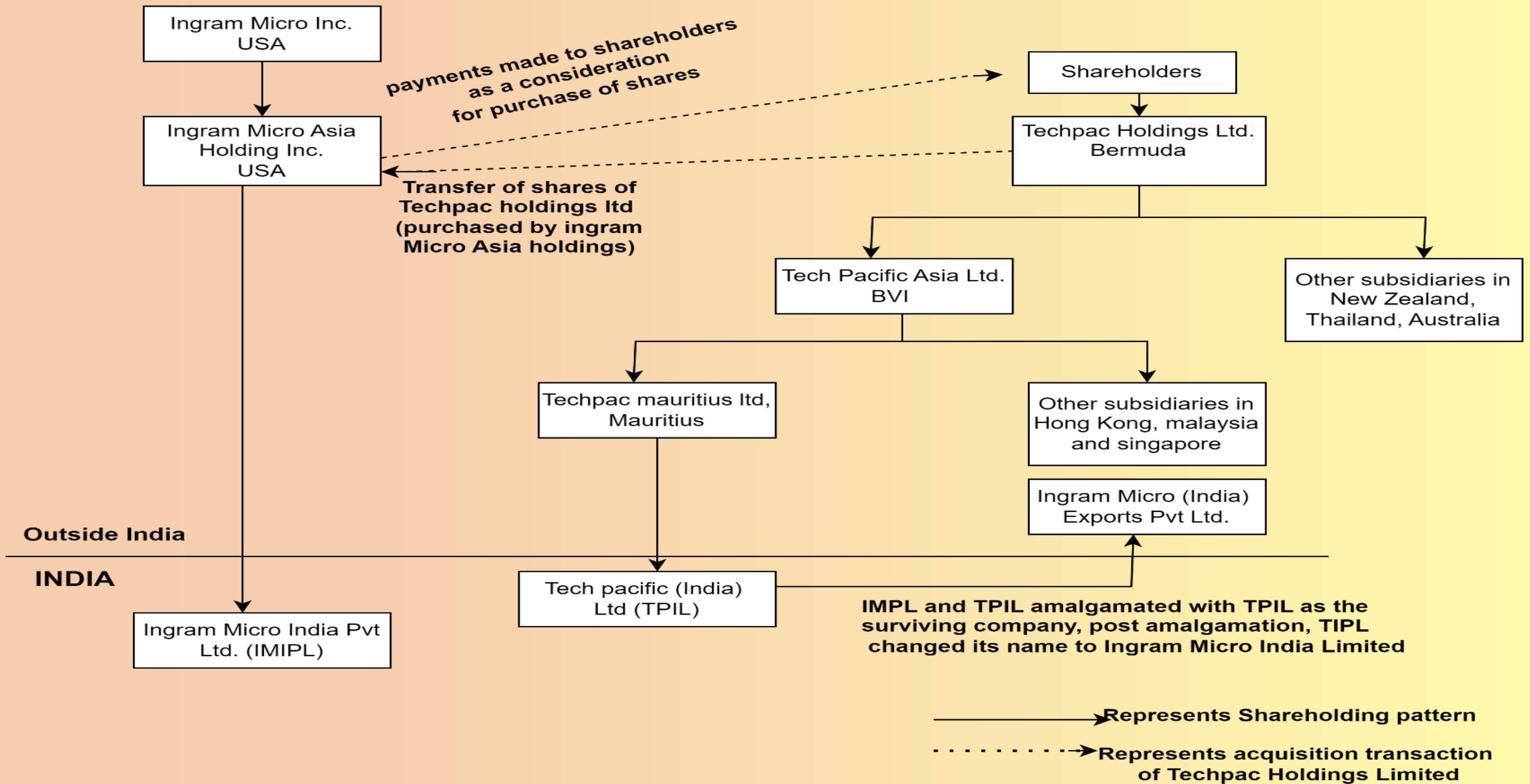
A person acting as a guarantor cannot be held liable for deducting TDS on payment made by the person in relation to whom guarantee has been given.

28.10.2023  
Jain Shrimal & Co.

# Facts of the Case

- Petitioner is a company incorporated in the United States of America and is engaged in the business of distribution of technology products.
- Ingram Micro Asia Holdings Inc. (IMAHI), a company incorporated in the United States of America, and a subsidiary of Petitioner, held indirectly a fully owned subsidiary in India by the name Ingram Micro India(P.) Ltd. (IMIPL).
- Hagemeyer Caribbean Holding N V, held shares in a company Techpac Holdings Ltd. (THL), registered in Bermudas.
- IMAHI acquired the shares of THL, the company incorporated in Bermudas, from its existing shareholders. Petitioner's role in this transaction was that it guaranteed the payment of the sale consideration by IMAHI under the Share Purchase Agreement (SPA) to the sellers, i.e., the existing shareholders of THL. The guarantee never came to be invoked because IMAHI discharged its obligation under the SPA to the sellers and accordingly, petitioner stood discharged of its obligations as a guarantor under the said SPA.
- A search operation was conducted on the premises of IMIL wherein various documents related to above transfer were found and Petitioner was asked as to why it should not be considered as Petitioner in default for not deducting TDS in above transaction.

# Explaining the transaction Between IMPL and TPIL



# Assessee's Contention

- Petitioner explained the transaction of purchase of shares of THL by IMAHI and the role of Petitioner being only a guarantor in the transaction. Therefore, Petitioner requested respondent no. 1 to discharge the impugned notice.
- Against the above notice petitioner preferred a writ petition against the Ld. AO before the Court challenging the impugned notice and the jurisdiction of Ld. AO to initiate proceedings.

# Revenue's Contention

- Against the contention of the petitioner revenue submitted that it has the jurisdiction on the petitioner and that he can send show cause notice to the assessee to decide on whether petitioner is an assessee in default u/s 201 of the Act.

# Legal Provisions

- **Relevant extract of Section 195 is as under:**
- Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" ) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:
- **Relevant extract of Section 201 is as under:**
- (1) Where any person, including the principal officer of a company,—
  - (a) who is required to deduct any sum in accordance with the provisions of this Act; or
  - (b) referred to in sub-section (1A) of section 192, being an employer,
- does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

# Ruling

- From the facts submitted above there is nothing to indicate that petitioner made any payment to anyone. The entire approach in the impugned order is that petitioner made the payment through IMAHI. There is no evidence to that effect.
- The Assessing Officer is relying on the annual reports of petitioner group where there is a mention that the group has acquired Techpac Group. The Assessing Officer's reliance on the Ingram Group's annual report of 2005 to conclude that it was petitioner who acquired THL is misplaced.
- It only indicates what the group has achieved during the relevant period and it cannot, by any stretch of imagination, be held that it was petitioner who had purchased and paid for the shares of THL.
- If Assessing Officer's logic has to be applied, then the ultimate beneficiary are the shareholders of petitioner and not petitioner and hence, no liability can be fastened on petitioner.
- The undisputed fact is that petitioner is not the purchaser of shares of THL. Therefore, the question of section 195 of the Act being applicable to petitioner would not arise. AO has proceeded on an erroneous basis that petitioner had acquired the shares of THL through its subsidiary IMAHI without even giving any reason for such a finding.
- AO has not appreciated or understood that a subsidiary company is an independent entity different from the parent company and actions and transactions of the subsidiary are not transactions of the holding company through the subsidiary.
- The SPA has been entered into by IMAHI as the purchaser and not on behalf of petitioner. SPA shows petitioner is the guarantor of the payment to be made by IMAHI and not the purchaser.
- AO has failed to appreciate that tax is required to be deducted by the person paying any sum or a person responsible for paying any sum to a non resident which is chargeable to tax under the Act and, therefore, there is no question of applicability of section 195 of the Act to petitioner.

## Our Comments

- Where a person is just a party to the contract as a guarantee but has not made any payment to non-resident for purchase of shares such person is not liable to deduct any TDS on payment made to seller for purchase of shares.
- However, if in the above case what would happen if guarantor was required to make payment to seller in case the original purchaser fails to make the payment? Will guarantor be required to deduct TDS in such a case or will the original purchaser would only be required to deduct TDS, as guarantor is just making the payment on behalf of the purchaser and the ultimate owner of such shares would be the purchaser and not the guarantor.
- The situation may differ from the terms and conditions of contract for guarantee.

<b>Section/Article</b>	Section 195 r.w.s. 201 and Article 13 of DTAA
<b>DTAA/Country</b>	India- USA DTAA
<b>Court</b>	High court of Bombay
<b>Date of decision</b>	26.02.2022



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