

Analysis of Provisions of Section 194C of Income Tax Act, 1961

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LAW OF TDS U/S 194C

HISTORY

This section was introduced long back in 1972 and thereafter amended many times. The scope of the said provision has been explained vide circulars Nos. 86 dated May 29, 1972, 93 dated 26.9.1972, 558 dated 28.3.1990, 681 dated 8.3.1994, 714 dated 3.8.1995, 723 dated 19.9.1995, 715 dated 8.8.1995 and 13 dated 13.12 2006. This section has been substituted by Finance (No 2) Act 2009.

**BASIC LIMBS
OF SECTION
194C**

CONTRACTOR

CONTRACT
(including
sub contract)

WORK

**SPECIFIED
PERSON**

MEANING OF ANY PERSON RESPONSIBLE FOR ANY SUM

Cargo linkers 179 Taxman 151 /218 CTR 695

Fact:

The assessee is a partnership firm who collects freight charges from the exporters who intend to send the goods through a particular airline and pays the amount to the airline or its general Sales Agents and for the services rendered, the assessee charges commission from the airlines.

According to the AO, the assessee was liable to deduct tax at source on the payments made to the airlines.

Contd...

The Hon'ble DHC held , “We are in agreement with the order passed by the Tribunal **which has mainly decided an issue of fact**, namely, the nature of the contract between the parties concerned. It has also been found as a matter of fact that **the contract is actually between the exporter and the airline and the assessee is only an intermediary**. Therefore, it is not a "person responsible" for deduction of tax at source in terms of s. 194C of the Act.”

MEANING OF SUB CONTRACT

EMC vs ITO 37 SOT 31

- ▶ Assessee an event manager assigned the job of art work and photography to others but did not deduct tax at source against payment made to them. AO was of the view that TDS should have been made u/s 194C (1) since clients of assessee had deducted tax u/s 194J. The assessee contended that it was a case u/s 194C (2) since part of work was assigned to others. However, copies of agreements with the clients not produced by assessee. Hence, the tribunal was of the view that nature of contract was to be seen in the light of treatment given by the clients. Accordingly, the tribunal has confirmed the view of AO since assessee was rendering only professional services u/s 194J.

MEANING OF SUB CONTRACT

ACIT vs Manish Dutt 46 SOT 130 (Mum)

- ▶ In this case, the assessee was engaged in the business of dubbing work in his own studio comprising of various dubbing equipments. Whenever, assessee's studio could not be used, he used to give the work of dubbing to other studios as a sub contractor. The assessee deducted tax u/s 194C @ 2% but AO was of the view that he should have deducted tax @ 20% u/s 194I. The CIT(A) as well as the Tribunal have held that it was a contract for work falling u/s 194C since the assessee had utilized the dubbing services which was in the nature of getting work done through a sub contractor.

MEANING OF SUB CONTRACT

Sands Advertising Communications vs DCIT 37 SOT 179 (Bang)

- ▶ Assessee was an advertising agency involved in activity of advertising in print media. Its sister concern 'T' was in similar business but was an accredited agency. The assessee entered in to an agreement with 'T' under which all ads created/developed by the assessee for its clients were to be released to print media through 'T' for which certain consideration was to be made to T. The AO was of the view that section 194C was applicable while the stand of assessee was that T was only a routing agency and not a sub contractor. It was held by the tribunal that section 194C is applicable only when payment is to be made to an advertising agency and not when payment is made by ad agency to print media as clarified in the Circular no 715 of 95. Hence, no TDS was required to be made.

MEANING OF SPECIFIED PERSON

- ▶ CENTRAL OR STATE GOVT.
- ▶ LOCAL AUTHORITY
- ▶ CORPORATIONS ESTABLISHED BY OR UNDER CENTRAL/STATE OR PROVINCIAL ACT
- ▶ COMPANY
- ▶ CO-OP SOCIETY
- ▶ SOCIETY REGISTERED UNDER SOCIETIES REGISTRATION ACT, 1980
- ▶ TRUSTS
- ▶ UNIVERSITIES OR INSTITUTION DECLARED TO BE UNIVERSITY BY UGC
- ▶ ANY AUTHORITY, CONSTITUTED IN INDIA BY OR UNDER ANY LAW, ENGAGED EITHER FOR THE PURPOSE OF DEALING WITH AND SATISFYING THE NEED FOR HOUSING ACCOMMODATION OR FOR THE PURPOSE OF PLANNING DEVELOPMENT OR IMPROVEMENT OF CITIES, TOWNS AND VILLAGES , OR FOR BOTH;
- ▶ ANY INDIVIDUAL/ HUF/AOP/BOI WHOSE ACCOUNTS ARE SUBJECT TO TAX AUDIT UNDER CLAUSE A OR B OF SEC.44AB IN THE IMMEDIATELY PREVIOUS YEAR
- ▶ ANY GOVERNMENT OF A FOREIGN STATE OR A FOREIGN ENTERPRISES OR ANY ASSOCIATION OR BODY ESTABLISHED OUTSIDE INDIA.

MEANING OF WORK

- ▶ The word “work” in this section would include—
- ▶ (a) advertising;
- ▶ (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- ▶ (c) carriage of goods and passengers by any mode of transport other than railways;
- ▶ (d) catering;
- ▶ (e) Manufacturing or supplying a product according to the requirement or specification of a customer by using the material purchased from such customer , but does not include manufacturing or supplying a product according to the requirement
- ▶ or specification of a customer by using the material purchased from a person, other than such customer.
- ▶ Supplying of labour for carrying out any work

But excludes

- ▶ **Contracts for rendering of professional services by lawyers, Doctors, Engineers, Chartered Accountants, Architects, Consultants, etc., as these are covered u/s 194J**

▶ **DCIT vs Satish Aggarwal And Company 124 TTJ 542(Amr).**

It has been held by the Hon. Tribunal that payments made against mere hiring of trucks would not fall within the scope of section 194C. The following observations are noteworthy:“12. For carrying out any work, manpower is the sine qua non and without manpower, it cannot be said that work has been carried out. Under s. 194C of the Act "carrying out any work" is the substance for making a payment relating to such work, liable for deduction tax at source. The provisions of S.194C are attracted only where any sum is paid for carrying out any work including supply of labour for carrying out any work.”

The CIT(A) as well as the Tribunal have held that it was a transport contract falling u/s 194C. Section 194I was held to be not applicable since no hiring was involved. Same view has been taken by the tribunal in the case of **Tata AIG General Insurance Co 43 SOT 215(Mum)** by observing that no particular car was provided but it was merely an arrangement for transportation of its employees and therefore section 194C would apply and not section 194I.

Ahmedabad Urban Development Authority vs. ACIT (ITAT - Ahmedabad)

Held

As the cars were owned and maintained by the contractor and all expenditure was borne by the contractor, the contract was for “carriage of passengers” for which the assessee paid a fixed amount. Therefore, the payment of vehicle hire charges fell within the scope of s. 194C and was not “rent” for s. 194-I.

MEANING OF ADVERTISEMENT CONTRACT

- ▶ The term "advertising" has not been defined in the Act. During the course of the consideration of the Finance Bill, 1995, the Finance Minister clarified on the floor of the House that the amended provisions of tax deduction at source would apply **when a client makes payment to an advertising agency and not when an advertising agency makes payment to the media, which includes both print and electronic media.**

▶ **Kurukshetra Darpan (P.) Limited-vs-CIT 169 Taxman 344 PH(BROADCASTING CONTRACTS)**

- ▶ In this case, the “A” was a cable network operator who was in the business of distributing cable connections to the customers and charged subscription fee from them. The “A” entered into a contract with the licensor of various TV channels for local cable distribution system.(AY 2006-07) It is relevant to mention here that these licensors are not the owners of the TV channels and they only have the exclusive right to market and distribute satellite based television service to various customers and users of the service. In the above-mentioned contract, the “A” was referred to as subscriber or affiliate as he was to pay the subscription to another party referred to as the licensor. These channels are telecasted from abroad and the “A” becomes an affiliate or of the licensor by entering into an agreement for payment of subscription. Held:

“ From the recital of the agreement itself, it is clear that the service that the “A” subscriber is availing is the receipt of 'telecasting signals' from the licensor or the company. The expression 'service' has also been referred to mean the TV channel which is dealt with by the licensor or the company. Therefore, what the “A” has transacted for with the licensor or company certainly includes within its ambit broadcasting and telecasting facility. The essence of the contract is to obtain broadcasting and telecasting of TV channels and thereafter its distribution amongst ultimate customers through the cable network of the “A”.

- ▶ Another plea of the “A” was that the licensor or the person to whom the “A” is making payment by itself does not do the work of “B&T” and is therefore outside the purview of section 194C of the Act. This argument deserves to be negated at the threshold. As we have pointed out earlier what the “A” is looking for is to obtain the telecast signals from the licensor, which is enough to deduce that the impugned contract involves broadcasting and telecasting of TV signals. Moreover, the licensor or the company, as is evident from the specimen agreement on record, in the business of distribution of satellite based TV channels and has exclusive rights to market and distribute said services in India, the service that is referred to in the agreement is the broadcasting and telecasting of TV signals.

In nut shell, In the case of cable network, no broadcasting is involved as mentioned in the judgment. However, the judgment would apply since telecasting is involved.

IMP. SLP has been admitted on this issue by the Supreme Court.

IMPORTANT FEATURES

- TDS is to be made at the prescribed rate where payment is made for carrying out any work(including supply of labour for carrying out any work) by a contractor;
- Such work must be in pursuance of a contract (including sub contract) between contractor and a specified person as defined in the Explanation;
- The recipient of payment must be a resident of India; I
- TDS is to be made at the time of credit or payment whichever is earlier;
- TDS is to be made @ 1% where payment is to be made to an individual or a HUF and @ 2% in other cases;
- Where TDS is required to be made for the work of manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from the customer, TDS shall be made on the invoice value excluding the value of material

IMPORTANT FEATURES

If such value is mentioned separately in the invoice and where value of the material is not mentioned separately in the invoice then TDS shall be made on the whole of invoice value(sub section 3);

- ▶ No TDS is required to be made by an individual or a HUF where payment is required to be made for the work carried out for the personal purpose (sub section 4)
- No TDS is to be made where sum credited or paid does not exceed Rs.30000/-. However, if aggregate of the amount of such sums in the financial year exceeds Rs.75,000/-, Tax should be deducted (sub section 5);
- No TDS is to be made where such sum is credited to the account of or paid to the contractor in the course of business of plying, hiring or leasing of goods carriages if the PAN is furnished by the contractor. Goods carriage shall mean as defined under Motor Vehicle Act 1988.

SPECIAL PROVISIONS/RELAXATION FOR TRANSPORT SECTOR
(REFER 194C[6] & [7])

'GOODS CARRIAGE' MEANING AND DEFINITION.

Declaration by person engaged in the business of plying, hiring or leasing goods carriage, on furnishing his PAN Number [earlier limit of owning not more than 2 goods carriage at any time in previous year by an individual done away with]

The person responsible for making payment shall furnish, such particulars, wrt payments made to such persons, in such form and verified in such manner as may be prescribed.

Explanation [ii'] to section 194C [7].

Explanation to section 44AE[7].---Sec 2 of MV Act, 1988.

(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

contd.

Section 2[28] of the Motor Vehicle Act, 1988.

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4[twenty–five cubic centimetres

Mythri Transport Corporation vs ACIT 124 TTJ 970 (Vishakha)

- ▶ In this case, the assessee was engaged in the business of transporting goods. It took on hire trucks from different parties and used them in its business for carrying goods of its clients. The hiring charges were paid without deduction of tax at source. AO was of the view that the assessee should have deducted tax at source u/s 194C. The tribunal held that it was a case of mere hiring of trucks and therefore, section 194C was not applicable. The tribunal held as under:
- ▶ “It is not established by the Revenue that other lorry owners, from whom the vehicles were hired, have also been fastened with any of the above said liabilities. In a sub-contract, a prudent contractor would include all the liability clauses in the agreement entered into by him with the sub-contractor. The assessee has also claimed before the tax authorities that the responsibility in the whole process lies with it only. Though the passing of liability is not the only criteria to decide about the existence of sub-contract, yet this contention of the assessee read with the liability clauses of the work order, cited above, supports its submission that the individual vehicle owners are simple hirers of the vehicles.”

Hiring of vehicle.. Contd...

In the instant case, there is no material to suggest that the other lorry owners involved themselves in carrying out any part of the work undertaken by the assessee by spending their time, energy and by taking the risks associated with the main contract work. In the absence of the above said characteristics attached to a sub-contract in the instant case, the payment made to the lorry owners stands at par with the payments made towards salaries, rent, etc. Hence the reasoning of the tax authorities, which is stated in para 8.3 supra, to hold that the payment made for hired vehicles is a sub-contract payment, in our opinion, is not correct and not based on relevant considerations.”

Hiring of vehicle..contd....

ACIT vs- Accenture Services (P) Ltd. 44 SOT 290 (Mum)

- ▶ In this case, the assessee deducted tax at source u/s 194C against payments made for hiring of vehicles for transportation of its employees. Under the contract, it was the responsibility of the transporter to provide the staff for running the vehicles as well as for ensuring all legal and operational obligations. The AO treated such payment for hiring of equipment falling u/s 194I and therefore passed an order u/s 201(1) for short deduction of tax.

HELD: IT IS A CASE FALLING U/S 194C AND NOT U/S 194I.

- ▶ **Associated Cement Co. Limited-vs-CIT 201 ITR 435 SC:** in this case, the assessee entered into contract (**SUPPLY OF LABOUR**)
- ▶ with a contractor for supply of labour for loading and unloading of goods. The question before the court was whether assessee was required to deduct tax at source from the payments made to the contractor. The apex court observed as under:
- ▶ "Any work" means any work and not a "works contract", which has a special connotation in the tax law. Indeed, in the sub-section, the "work" referred to therein expressly includes supply of labour to carry out a work. It is a clear indication of the Legislature that the "work" in the sub-section is not intended to be confined to or restricted to "works contract". Work envisaged in the sub-section, therefore, has a wide import and covers "any work" which one or the other of the organizations specified in the sub-section can get carried out through a contractor under a contract and further it includes obtaining by any of such organizations supply of labour under a contract with contractor, for carrying out its work which would have fallen outside the "work", but for its specific inclusion in the sub-section."
- ▶ **HENCE TAX SHOULD BE DEDUCTED FOR THE CONTRACT OF SUPPLY OF LABOUR**

▪ No TDS obligation u/s. 194C for making payments towards supply of material portion of a **divisible contract**

Karnataka Power Transmission Corporation Ltd v. ACIT , 2011], 10 taxmann.com 237 (Bang. - ITAT)

When parties enter into **two separate contracts**, one for material and one for labour, the transaction would not be 'one' and indivisible, but would fall into two separate agreements, **one for work/service and the other for sale**; in such case the provisions of s. 194C could apply only to the **labour contract** and not to the materials contract

- ▶ **CIT vs Glenmark Pharmaceuticals Ltd 324 ITR 199 (Bom)**
- ▶ The court held:-
- ▶ “The expression “carrying out any work” in section 194C would not include a case where (i) where the property in the article or thing passes to the customer upon delivery, and (ii) the material that was required was not purchased/sourced from the purchaser/customer, but was purchased or independently obtained by the manufacturer from a person other than the customer. **The rationale behind this was that where a customer provides the material, what the manufacturer does is to convert the material in to a product desired by the customer, the contract essentially involves work of labour and not a sale.”(page 218)**

Other relevant case laws on similar facts/grounds

- [2008] 306 ITR 0124– Commissioner of Income–tax vs. Reebok India Co. (Delhi)
- [2008] 306 ITR 0025– Commissioner of Income–tax vs. Hindustan Lever Ltd. (Gujarat)
- [2008] 306 ITR 0023– Commissioner of Income–tax vs. Girnar Food and Beverage P. Ltd. (Gujarat)
- [2008] 304 ITR 0017– Commissioner of Income–tax vs. Deputy Chief Accounts Officer, Markfed, Khanna (P& H)
- [2006] 283 ITR 0197– Commissioner of Income–tax vs. Dabur India Ltd. (Delhi High Court)
- [2006] 281 ITR 0099– BDA Ltd. vs. Income–tax Officer (TDS) [Bombay High Court]

CASE STUDY-1

A wants his office to be renovated. He enters into a contract with B under which B agrees to execute the work of painting and polishing with his own material. In such a case, the dominant object is the execution of work irrespective of the fact that property in goods passes in the course of executing the work. Hence, it will be a case of works contract and the provisions of section 194C would apply.

CASE STUDY-2

A wants to purchase uniforms for its employees. So, he enters into a contract with B under which B is required to supply the uniform as per the specification provided by A. B purchases the material from the market and prepares the uniforms as per the specification and delivers the same to A against payment. In such a case, the dominant object is purchase of uniform irrespective of the fact that supply is to be made as per the specification of the customer.

Hence, section 194C would not apply.

- ▶ **State of Himachal Pradesh -vs- Associated Hotels, AIR 1972 SC 1131; [1972] 29 STC 474 (SC)** wherein the court observed in para 9 as under:-
- ▶ A contract of sale is one whose main object is the transfer of property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where the principal object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one of work and labour.

- ▶ Mere passing of property in an article or commodity during the course of the performance of the transaction in question does not render it a transaction of sale. For, even in a contract purely of work or service, it is possible that articles may have to be used by the person executing the work and property in such articles or materials may pass to the other party. That would not necessarily convert the contract into one of sale of those materials. In every case the court would have to find out what was the primary object of the transaction and the intention of the parties while entering into it.

- ▶ **S. R. F. Finance Limited-vs-CBDT 211 ITR 861 (Del):**
- ▶ The issue before the court was whether payments made to broker/commission agent would fall within the scope of section 194C. Considering the various circulars and the various amendments proposed and dropped, it was observed:-
- ▶ it was held that act of broker/commission agent amounts to act of service and thus outside the purview of section 194C.

▶ **East India Hotels-vs-CBDT 320 ITR 526 (Bom):**

- ▶ The issue before the court was whether services provided by a hotelier would fall within the scope of the said expression. The court answered in negative by observing as under:
- ▶ “The services rendered by a hotel to its customers by making available certain facilities/amenities like providing multilingual staff , 24 hour service for reception, telephones, select restaurants, bank counter, beauty saloon, barber shop, car rental, shopping centre, laundry, health club, business centre services etc do not involve carrying out any work which results into production of the desired object and therefore, would be outside the purview of section 194C of the Act.”

Entertainment One India ITD 491 (Mum)

The assessee made advances to the producers who approached the assessee with the film projects. AO was of the view that assessee should have deducted tax u/s 194C. The tribunal was of the view that agreement was merely a finance agreement and there was no relationship as that of principal and contractor. Hence, section 194C was not applicable.

- ▶ **CIT vs Poompuhar Shipping Corporation Ltd 282 ITR 3(Mad):**
- ▶ In this case, assessee was engaged in Shipping business. It took on hire a ship which was used by it in its business. It paid the hiring charge without deducting the tax at source. The case of the revenue was that section 194C was applicable since Explanation III was clarificatory and had retrospective effect. The court noted that it was not the case of the Revenue that the assessee entered into the said contract with the shipping company for transport of coal from one place to another. Hence, the court was of the view that mere hiring of ships for the purpose of using the same in the assessee's business would not amount to a contract for carrying out any work as contemplated in section 194C. It was also held that the said Explanation was not retrospective.

DCIT vs Japan Airlines 93 ITD 163 (Del) & Singapore Airlines 7 SOT 84 (Chennai)

▶ in the case of Japan Airlines, the tribunal observed asunder:

▶ “The Airport Authorities of India simply granted permission to landing and parking. It did not grant any exclusive right or interest to J.A.L. in any specific portion of land or building. It granted a license and also provided certain other facilities not necessarily for use of land but for safe landing and parking in pursuance of the guidelines referred to above.

Hence, the payments made by the “A” cannot be termed as payment of rent so as to be covered within the purview of section 194 I of the Act” The above view has been followed by the Chennai bench of the tribunal.

However, it is to be noted that the tribunal in the case of Japan Airlines further held that landing & parking charges fall u/s 194C.

OTHER IMPORTANT CASE LAWS

- ▶ **Glaxo Smithkline Consumer Healthcare Ltd -vs- ITO 12 SOT 221 (Del)-**
- ▶ Held that payments made to clearing & forwarding agent fall under 194C & not u/s 194J.
- ▶ **CIT-vs-Dewan Chand 178 Taxman 173(Delhi High Court) -**
- ▶ held that payments made to daily wage workers could not be considered as contractual payments u/s 194C.

OTHER IMPORTANT CASE LAWS

Bhagwati Steels 326 ITR 108 (P&H High Court)

- ▶ Held that where the payment was made for purchase of goods (inclusive of freight charged separately) for which there was no separate contract for carriage of goods, the provisions of section 194C could not be applied.

DCIT vs. M/s. S. K. Tekriwal (ITAT Kolkata)

No s. 40(a)(ia) disallowance for short-deduction TDS default

The assessee paid Rs. 3.37 crores as “machine hire charges” on which it deducted TDS u/s 194C at 1%. The AO held that the payment was “rent” and TDS ought to have been deducted at 10% u/s 194-I. He disallowed the expenditure u/s 40(a)(ia). This was reversed by the CIT (A). On appeal by the department, HELD dismissing the appeal:

S. 40(a)(ia) provides for a disallowance if amounts towards rent etc have been paid without deducting tax at source. **It does not apply to a case of short-deduction of tax at source.** As the assessee had deducted u/s 194C, it was not a case of “non-deduction” of TDS. If there is a shortfall due to difference of opinion as to which TDS provision would apply, the assessee may be treated as a defaulter u/s 201 but no disallowance can be made u/s 40(a)(ia). (**Chandabhoy & Jassobhoy** (ITAT Mumbai) followed

Bapushaeb Nanasaheb Dhumal vs. ACIT (ITAT Mumbai)
(APPLICABLE /RELEVANT FOR ASS. YR. 2009-10 OR EARLIER YEARS)

Facts: The assessee made payments to contractors during the previous year and though Sec. 194C requires TDS at the stage of payment/credit, did not do so. The tax was deducted on 31st March and paid over in Sept before the due date of filing Income tax return. . The AO took the view that while the payment made to the sub-contractor for March was allowable, the payments for the earlier months was disallowable u/s 40(a)(ia).

HELD:

Failure to deduct or deposit tax as per s. 194C or Chapter-XVII makes the assessee liable to the consequences specified in Chapter-XVII. **Sec. 40(a)(ia) is in addition to Chapter XVII.** S.40(a)(ia)(A) provides that if tax is deducted during the last month of the previous year and paid on or before the due date of filing of return as per s. 139(1), then such sum shall be allowed as deduction. In cases where tax is deducted other than the last month of previous year but is deposited before the last day of the previous year, then it will be allowed deduction.

Therefore, the conditions for allowability of deduction are prescribed u/s 40(a)(ia) itself and Chapter-XVII and s. 194C are not relevant. If the condition of deduction and payment prescribed u/s 194C / Chapter XVII are held applicable for disallowance of deduction u/s 40(a)(ia), then s. 40(a)(ia) will be rendered meaningless, absurd and otiose. **Since the assessee had (belatedly) deducted tax in the last month of the previous year i.e. March 2005 and deposited the same before the due date of filing the return u/s 139(1), deduction had to be allowed u/s 40(a)(ia) (A).**

- ▶ **Bharti Shipyard Ltd. vs Dy CIT(Mum ITAT)**
- ▶ Held that S. 40(a)(ia) amendment by Finance Act 2010 is not retrospective.

Relevant Circulars.

□ Circular No. 93, dated 26/09/1972 :

- Oral Contracts are also covered.
- Contract of work given on piece rate basis is covered, conditions of 20000/50000 applies.
- TDS is to be deducted on advance payment also.
- ***TDS is not to be deducted on in relation to payments made to banks for discounting bills, Collecting / receiving payments through Cheques / drafts, opening and negotiating letter of credit.***

□ Circular No. 295, dated 06/03/1981 :

In cases of 'lump sum contracts' where in substance and in reality stores and material supplied to the contractor by the department were fixed or incorporated in to the work, the cost of such stores and materials could not be included in the in the turnover of the contractor.

Relevant Circulars.

- Circular No. 715, dated 08/08/1995 : Provisions of S. 194C of the Income Tax Act.
 - Provision of S.194C shall attract if **client make payment to advertising agency but not to media**, which include both print and electronic media, tax to be deducted at rate of 1%. **(at present rates)**
 - If **advertising agency makes payment to their models, artists, photographer etc.** then tax shall be deducted @ of 10% **U/s 194 J** (Fees for professional and technical service.).
 - where advertising agency issues **consolidated bill** for art work and other related jobs **then deduction u/s 194C** will have to be made @ 1 %, but the advertising agency shall deduct Tax at source at prevailing prescribed rates.

□ **Circular No. 715 dated, 08/08/1995 :**

- S. 194C would be applicable on contract of putting up a hoarding.
- Tax to be deducted at gross amount of bill.
- Provisions of S. 194 C shall also apply to agreement of sponsorship.
- Provisions of S. 194 C shall also apply to payments for costs of advertisements issued in the souvenirs brought out by various organizations.
- **No TDS** on any payments made to a travel agents or an airline for purchase of ticket for travel as there is a privity of contract between the individual passenger and the airline / travel agent.
- Tax has to be deducted at source on payments being made to clearing and forwarding agent for carriage of goods.
- Provision of S. 194C shall also apply to payments made to couriers for carrying documents, letters etc.

□ **Circular No. 715 dated, 08/08/1995 :**

- Provision of S.194C shall also apply to payment of freight when the goods are received on “ freight to pay ” basis.
- No TDS on payment made for serving food in a restaurant in the normal course of running of the restaurant / café.
- TDS provisions shall apply to payments made to recruitment agency, u/s 194J.
- NO TDS u/s 194C on FD Commission and brokerage.

NO TDS ON REIMBURSEMENTS

no TDS is required to be made when bills are raised separately by the agent only for reimbursement of actual expenses incurred by it.

ITO vs. M/s ONS Creations Pvt. Ltd. (Del-ITAT-E Bench), I.T.A. No. 3981/Del/2010

Asstt. CIT v. Grandprix Fab. (P.) Ltd. (2010) 34 DTR 248 (Del)(Tri.)

Relevant Circulars.

- **Circular No. 1/2008, dated 10/01/2008 :**

The provision of Section 194 C shall apply to payments made to cold storage owners.

- **Circular No. 13/2006, dated 13/12/2006.**

The provision of S. 194C would apply in respect of a contract for supply of any article or thing as per prescribed specifications only if it is a contract for work and not a contract for sale. [**CST vs. Purshottam Premji (1970) 26 STC 38 (SC)**]

Issues

- **TDS u/s 194C attracts on payment made by school to transporters for picking & dropping the students to and from school to their homes by buses : [2011] 10 taxmann.com 46 (Delhi), Lotus Valley Education Society v. Asstt. CIT (TDS):**

Under agreements (i) no responsibility of assessee regarding buses used in activity of carrying its students and staff, and (ii) transporters only were liable to keep and maintain required number of buses for such activity at their own expenses with specified standard . **same is not liable for TDS u/s 194-I since no utilization of buses by assessee but they were used by transporters for fulfilling obligations set out in agreements.**

ISSUES

TDS u/s 194C attracts on Payment made by assessee to vehicle owners for plying of employees from one place to another where drivers and vehicles were of the owners itself.- **Explanation (iii) (c) of the provisions of section 194C would apply.**

[2011] 10 taxmann.com 233 (Ahd. - ITAT), Ahmedabad Urban Development Authority v. ACIT

[2011] 44 SOT 290 (Mum.), Asstt. CIT (TDS), v. Accenture Services (P.) Ltd.

Issues

- No TDS u/s 194C on the transaction being one of sale and purchase of goods under the Sale of Goods Act, not liable for deduction under section 194C.

[2011] 007 ITR(Tri.) 16 (ITAT-Del), Income-tax Officer v. Mother Dairy Food Processing Ltd.

CIT v. Dabur India Ltd. [2006] 283 ITR 197 (Delhi) followed.

Mani Muthusamy VS. Personal Assistant to the Collector-[2010] 186 Taxman 339 (MAD.) - question as to whether subject contract was a works contract or sale contract was largely one of fact depending upon terms of contract on proper construction of terms and conditions between parties including obligation cast upon them which had to be discharged under contract and, therefore, writ petition filed by assessee was not maintainable.

- shipping freight charges paid **by an exporter to shipping agents of non-resident shipping companies** for which necessary memos were issued by the shipping agent, are not liable for TDS u/s 194C.

[2011] 10 taxmann.com 229 (Ahd. – ITAT), DCIT v. Hasmukh J. Patel

Issues

- No TDS u/s 194C on fees shared by an operator of study center with its franchisees under a license agreement. [2011] 10 taxmann.com 242 (Delhi – ITAT) Career Launcher (India) Ltd. v. ACIT
- Same does not attract s. 194-I also. 2009] 184 TAXMAN 472 (DELHI), CIT v. NIIT Ltd.
- No TDS u/s 194C on payments made by assessee to its workers where the same are held to be in nature of wages. [2009] 178 TAXMAN 173 (DELHI), CIT v. Dewan Chand

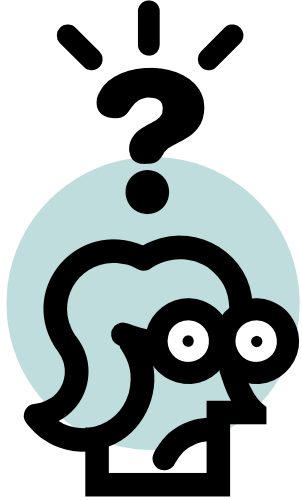
QUIZZING TIME



Q- Whether payment directly made to Doordarshan /AIR for release of advertisements is liable to tax deduction?

A- No, the payments made directly to Doordarshan /AIR is not subject to TDS as Doordarshan /AIR ,being a Government agency, is not liable to income tax.

(Source: Circular no.715 dt.8.8.1995)



QUIZZING TIME

Q-WHETHER SEA/AIR FREIGHT PAID TO RESIDENT STILL LIABLE TO TAX DEDUCTION?

A- THE EXEMPTION IS AVAILABLE ONLY FOR GOODS CARRIAGE VEHICLES SPECIFIED IN MOTORS VEHICLE ACT, 1988

**THANK
YOU**

By:

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&

CA Vijay Kumar Gupta

Team - Voice of CA