

Payment made to advertising agency attracts TDS under Section 194C and not under section 194J, even though there is no written contract

In the matter of *M/s. Perfect Probuild P. Ltd. v. DCIT, Circle 76(1) [ITA No. 1034/Del/2018 order dated August 05, 2021]* before the Income Tax Appellate Tribunal (“ITAT”), Delhi, it is held that, TDS has to be deducted u/s 194C of Income Tax Act, 1961 (“the IT Act”) on payment made to advertising agency even if there is no written contract.

Basis facts:

The Appellant is engaged in the business of construction. The Appellant had a lease agreement with Noida Authority (“the lessor”) wherein the Appellant is a lessee and paid lease rent to the lessor. The Appellant didn’t deduct TDS on payment of annual lease rent paid to the lessor on the basis of letter given by the lessor in this regard. Further, the Appellant made payments for advertisement expenses deducted TDS at 2% under Section 194C of the IT Act.

Allegations of Assessing Officer (AO):

For Lease Rent

Even if the assessee is not to be treated as assessee in default, as payment is made by lessor, it does not absolve the assessee from interest liability u/s 201(1A) of the IT Act.

For advertisement expenses

The TDS was to be deducted at 10% under Section 194J (fee for professional services) of the IT Act, and not at 2% under Section 194C of the IT Act, in as much as there was no contract for providing advertisement services. On that account, the AO raised a demand u/s 201(1) and 201(1A) of the IT Act for short deduction of TDS on payment of advertisement expenses.

Observations and findings:

The Hon’ble ITAT observed that, CBDT has clarified that tax will be deducted at source u/s 194J from the payments made for professional services, when advertising agency makes payment **for** professional services. Further, it has clarified the distinction between ‘payments by a person to the advertising agency’ and ‘payments made by advertising agency to the television channel or newspaper company etc’.

It can be concluded that when a person makes a payment **to advertising agency, such payments are covered by section 194C** whereas if the **advertising agency makes any payment to a professional, it would be covered by section 194J**.

Further, with respect to lease rent, the Hon'ble ITAT observed that, when once the basic liability of reimbursement of TDS is made by the lessor, the authority shall not pursue any coercive method of recovery of interest from lessee, as decided in case of Prateek Buildtech (India) Pvt. Ltd. v. ACIT [2020(3) TMI 224-ITAT Delhi] and M/s. Skytech Construction Pvt. Ltd. vs. ITO(TDS) [2019 (12) TMI 601-ITAT Delhi].

Held:

The Hon'ble ITAT on the basis of observations made, held that TDS on payment of advertisement services has to be deducted u/s 194C of the IT Act at 2% and not u/s 194J of the IT Act, even if there is no written contract between advertising agency and the Appellant. Further, no interest liability arises to lessee if taxes are duly paid by lessor.

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