

Rent paid to a depot agent under a composite service agreement would attract 194C and not sec. 194-I TDS

Summary – The Mumbai ITAT in a recent case of Apar Industries Ltd., (the Assessee) held that where payment made to a depot agent by assessee under agency service agreement was described as rentals paid for premises and specifications were also earmarked and it was for composite services, arrangement would fall under definition of 'rent' provided under section 194C and not under section 194-I

Facts

- The assessee, engaged in the business of manufacturing of oil, conductor and NBR appointed depot agents.
- It made certain payment towards rent and management fees to depot agent.
- A TDS survey on the assessee revealed that the assessee was making TDS in accordance with the provisions of section 194C in respect of both payments. However, the Assessing Officer opined that the provisions of section 194-I, in respect of rental payment and the provisions of section 194J, in respect of management fees, were applicable. Accordingly, he worked out the short deduction of TDS under section 194-I and under section 194J.
- The Commissioner (Appeals) confirmed the Assessing Officer's order.

Held

- It is evident that the assessee is required to make rental payment as per the provisions of clause 7 of the agreement for a premises and the warehouse on specifications.
- As per the assessee, the depot agents are *pari materia* with the clearing and forwarding agents. Further, it is the case of the assessee that the payment is part of the composite services and the aim of the payment is security of the goods.
- From the perusal of provisions of section 194-I, it is evident that any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any land or building including factory building etc. constitutes 'rent'. It is not necessary that the above assets land or building or others should be owned by the payee.
- The above provisions of section 194-I relating to 'rent' cover 'any other agreement or arrangement'. In this case, the payment made is described as 'rentals' paid for premises owned by the assessee and specifications are earmarked, arrangement including the agency services agreement, will fall under the definition of 'rent' providing in section 194C.
- Regarding the management fee payment, none of the services constitutes any professional or technical services as mentioned in section 194J. In fact, the order of the Commissioner (Appeals) was not clear as to whether these payments were considered by the revenue as either for

professional services or for technical service. There was no clarity. The Commissioner (Appeals) summarily confirmed the applicability of the provisions of section 194J to these payments and approach of the revenue is not appreciated. Therefore, the order of the Commissioner (Appeals) should be set aside on this issue and claim of the assessee should be allowed.