

Payment made to put-up hoarding is an advertisement contract; attracts TDS under sec. 194C

Summary – The Mumbai ITAT in a recent case of Madison Communication (P.) Ltd., (the Assessee) held that Contract for putting up a hoarding is in nature of advertising contract and provisions of section 194C would be applicable.

Facts

- The assessee was an advertising/media agency.
- During assessment, the Assessing Officer noticed that the assessee had shown expenditure on advertisement through outdoor display which included payment for advertisement on hoarding/board. Also, the assessee had deducted TDS at the rate of 2 per cent under section 194C on these payments.
- The Assessing Officer was of the firm belief that assessee was liable to deduct TDS under the provisions of section 194I and not as per the provisions of section 194C. Since, assessee had deducted TDS under section 194C, he was liable to pay interest under section 201(1A).
- On appeal, the Commissioner (Appeals) concluded that the assessee had sub-contracted the work for putting up the hoardings to hoarding contractors and the prime responsibility of payment of rent of the sites was of the hoarding contractor and not of the assessee who acted as the main contractor. Therefore, the payments made by the assessee would fall in the category of the provisions under section 194C and not of section 194I.
- On appeal, the revenue contended that the payee firms had sublet the hoarding sites to the assessee, therefore the payment made by the assessee for hiring the hoarding sites was liable to TDS under section 194I. It further contended that work contract for advertising covered under the provisions of section 194C was limited to contract between the client of the advertising company and the advertising company. Any arrangement with any other person by advertising company to advertise its client's products was not necessarily an advertising contract covered under section 194C and that advertising services was included in definition of professional services subject to TDS under section 194J.
- However, the assessee contended that he had only delivered the advertisement material to the contractee and thereafter it was incumbent upon the contractee to display the advertisement material properly on the display board/hoardings and any discrepancy in the display would result into non-payment to the contractee.

Held

- It is an undisputed fact that none of the hoarding sites are owned by the assessee nor taken on rent. The assessee has only the limited right to display its clients advertisement on that hoarding for a particular period of time. As per CBDT [Circular No. 715, dated 8-8-1995](#) the contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable.

It was however clarified that if a person has taken a particular space on rent and thereafter sublets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 194C.

- Being an advertising/media agency, the assessee does not put up a hoarding or takes any space on rent. It only pays to the hoarding contractors for allowing the assessee to display its client's advertisement on their hoarding. It is also an undisputed fact that the assessee has booked hoarding sites through hoarding contractors on behalf of its clients for display of their advertisement. Thus, the prime responsibility of payment of rent of the sites is of the hoarding contractor and not of the assessee. The CBDT in its Circular No. 714 dated 8-8-1995 has clarified that the tax will be deducted at source under section 194J from payments made for professional services. Thus, when an advertising agency makes the payments for professional service to a film artist such as an Actor, Cameraman or a Director, etc., tax will be deducted at the rate of 5 per cent.
- Considering all the facts in totality, it is found that the assessee has entered into a contract with other parties for display of advertisement of its client and the transaction is purely in the nature of contract for the work of advertising as defined in clause VA of Explanation to section 194C. Thus, no interference in the findings of the Commissioner (Appeals) is called for and the appeals filed by the revenue are accordingly dismissed.