

Wheeling charges paid for transmission of electricity would attract TDS under sec. 194C instead of sec. 194J

Summary – The Delhi ITAT in a recent case of Delhi Transco Ltd., (the Assessee) held that where Tribunal in earlier assessment held that assessee company was not required to deduct any tax under section 194J on payment of wheeling charges for transmission of electricity, provisions of section 194J would not apply on said payment made. No penalty could be imposed on assessee where additions itself had been deleted.

Facts

- During the course of survey, it was observed that the assessee had deducted TDS at 2 per cent under section 194C on payments of wheeling charges paid to 'PGCIL' for transmission of electricity.
- The Assessing Officer was of the view that the assessee was required to deduct the tax at 5 per cent of said payment under section 194J as PGCIL was providing technical services to the assessee by transmitting the electricity. Therefore, an order was passed under section 201(1) and 201(1A) raising demand against the assessee.
- On appeal, the Commissioner (Appeals) deleted the demand by observing that the assessee was not required to deduct tax under section 194J as held by the Tribunal in the case of the assessee in earlier assessment year.
- On appeal:

Held

- The Tribunal in the assessment year 2005-06 has considered an identical issue wherein it was held that the transmission of electricity for the assessee has been undertaken in the normal course of its business and the income is to be classified as business income. This may lead to no liability for tax deduction at all. Thus, the issue is vexed and in such a situation, the assessee is not liable to be saddled with higher liability for deduction of tax at source. Accordingly, it is held that no further liability could be fastened on the assessee.
- On due consideration the order of the co-ordinate Bench in the assessee's own case in the assessment years 2005-06 and 2006-07 as well as in the case of *Chattisgarh State Electricity Board v. ITO (TDS)* [\[2012\] 50 SOT 33/18 taxmann.com 150 \(Mum.\)](#), the Commissioner (Appeals) has appreciated the controversy in the right prospective and no interference is called for.