

Wheeling charges paid to 'Power Grid Corporation' couldn't be deemed as 'FTS'; liable to TDS under sec. 194C

Summary – The High Court of Delhi in a recent case of Delhi Transco Ltd., (the Assessee) held that where assessee-company paid wheeling charges for transportation of electricity, said charges paid could not be characterized as fee for technical service and no deduction under section 194J could be made

Facts

- The assessee entered into Bulk Power Transmission Agreement (BPTA) with PGCIL, power grid corporation. A survey was carried out at business premises of assessee and it was noticed that assessee had deducted TDS at 2 per cent under section 194C on wheeling charges paid to PGCIL.
- The Assessing Officer held that wheeling charges paid by assessee were fees for technical services liable for TDS under section 194J and accordingly, treated assessee as defaulter under section 201(1).
- On appeal, the Commissioner (Appeals) agreed with the contention of the assessee that section 194C would apply, however, in absence of sufficient legal precedent on said issue, confirmed the order of the Assessing Officer.
- On further appeal, the Tribunal held that the assessee was not liable to be saddled with higher liability of TDS as it was not a technical service.
- On appeal:

Held

- By virtue of the BPTA agreement between assessee and PGCIL there is transportation of the electricity from PGCIL to assessee through the equipment and network required statutorily to be maintained by PGCIL through its technical personnel using technical expertise. This, however, does not result in PGCIL providing technical services to assessee. Therefore the wheeling charges paid by assessee to PGCIL for such transportation of electricity cannot be characterized as fee for technical services.
- The ultimate conclusion of the Tribunal is therefore not erroneous. Accordingly the question framed by the Court is answered in the negative *i.e.*, against the revenue and in favour of the assessee.