

Mere use of technology won't make any service as 'FTS' u/s 194J

Summary – The Mumbai ITAT in a recent case of Fino Fintech Foundation., (the Assessee) held that Provisions of section 194J would be applicable only if any managerial, technical or consultancy services are provided to an assessee and mere use of technology would not make any service managerial/technical or consultancy service

Facts

- Assessee-company was providing banking services in extreme rural areas through its network of agents, through whom the customers could do banking business by use of device called 'Point of Transaction Machine (POT)'.
- The assessee had incurred major expenditure under the heads enrollment charges, AMC charges, POT usage charges and rent for POT machines and the assessee had claimed those expenditure as contract expenses and had deducted tax as per provisions of section 194C. The Assessing Officer observed that the nature of the activities of the assessee were technical, that for such services the service provider must have provided technical/professional services. He concluded that said expenses incurred were covered by the provisions of section 194J. Finally, he held that the assessee was in default under section 201/201A.
- The FAA held that service availed by the assessee were in the nature of a contract and that there was no acquisition of technical know-how by the assessee.
- On appeal:

Held

- The provisions of section 194J would be applicable only if any managerial, technical or consultancy services are provided to an assessee and that mere use of technology would not make any service managerial/technical or consultancy service. In the case under consideration use of technology is there, but, it does not mean that it was not a contract. The assessee had rightly deducted TDS as per the provisions of section 194C. There is no legal or factual infirmity in the order of the FAA.