

Liaisoning charges paid by manufacturer of sports goods couldn't be held as payment for professional services u/s 194J

Summary – The Amritsar ITAT in a recent case of Rattan Brothers, (the Assessee) held that where assessee, a manufacturer and exporter of sports goods, paid certain amount to one 'F' as liaisoning charges and also paid certain amount to one 'H' for purchase of catalogue and brochure and claimed deduction of same, provisions of sections 194C and 194J were not applicable to assessee, and, therefore, it was not required to deduct TDS on such payments

Facts

- The assessee was engaged in the business of manufacturing and export of sports goods.
- During the assessment year 2008-09, it paid a certain amount to one 'F' as liaisoning charges and claimed deduction of same. It also paid a certain amount to one 'H' for purchase of catalogue cum brochure and claimed deduction of same.
- The Assessing Officer disallowed under section 40(a)(ia) the payment made to 'F' holding that it was in the nature of professional fees for providing professional services, on which the assessee was required to deduct TDS under section 194C/194J, which it had failed to deduct. The Assessing Officer also disallowed under section 40(a)(ia) the payment made to 'H' holding that the payment was made for advertisement charges, on which the assessee was required to deduct TDS under section 194C, which it had failed to deduct.
- The Commissioner (Appeals) upheld the disallowance made by the Assessing Officer.
- On second appeal:

Held

- The assessee has paid a certain amount to 'F' as liaisoning charges. The authorities below has held that TDS was required to be deducted from such payment. The provisions of section 194C relating to payment to contractors is not applicable to the assessee, as the payee had not carried out any work as contractor, as 'any work' as contained in the provisions of section 194C necessarily involve carrying out of some physical work. The Madras High Court in the case of *Madras Bar Association v. CBDT* [1995] 216 ITR 240 has specifically held that the expression 'any work' in section 194C means work involving activities which are predominantly physical resulting into tangible work. In the instant case, admittedly payee has not carried out any physical work resulting into tangible work and has only provided services to the assessee which cannot be categorized under the provisions of section 194C for the purpose of deduction of tax at source. Therefore, the provisions of section 194C are not applicable to the assessee as regards payment of liaisoning charges.

- As regards the applicability of section 194J to the instant case is concerned, the said section requires the assessee to deduct TDS for any payment made as fee for professional services or fee for technical services and for making payments for royalty or any sum referred to in clause (va) of section 28. The section *vide* Explanation to section has explained the meaning of the professional services to be services rendered in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA. The services provided by payee do not fall into any of the above category. The 'fees for technical services' has been defined in *Explanation 2* to clause (vii) of sub-section (1) of section 9. As per the meaning of fee for technical services as defined in section 9, one finds that *vide* Explanation 2 fees for technical services means any consideration for rendering of any managerial, technical or consultancy services including the provisions of services.
- The terms managerial, technical and consultancy do not find mention in the Income Tax Act and it is a settled law that they need to be interpreted based on their understating in common parlance.
- In the instant case, the liaisoning services provided by 'F' were neither managerial nor consultancy nor technical in nature. Therefore, the assessee was not required to deduct TDS on such payment under section 194J also. In view of the above, the provisions of sections 194C and 194J were not applicable to the assessee as regards payment of liaisoning charges.
- As regards the TDS on payment made to 'H' is concerned, it represents the amount paid for purchase of catalogue cum brochure. Therefore, this transaction is for purchase of an item which is out side the purview of section 194C. Further nothing has been placed on record to show that material was provided by the assessee. In view of the above, the assessee was not required to deduct TDS on payment made to 'H'.