

Open charges paid to Power Grid for use of transmission lines couldn't be held as royalty

Summary – The Visakhapatnam ITAT in a recent case of Nava Bharat Ventures Ltd., (the Assessee) held that Where assessee a manufacturer of electricity, entered into power purchase agreement with 'R' and, in said process, it used transmission lines owned by Power Grid Corporation of India Ltd. for transmission of electricity from its plant to various parts of country, payment of open charges for use of said facilities did not come within purview of royalty under section 9(1)(vi)

Facts

- The assessee was a manufacturer of electricity. It entered into power purchase agreement with 'R'. In said process, the assessee used transmission lines owned by Power Grid Corporation of India Ltd. for transmission of electricity from its plant to various parts of the country and paid open access charges for use of transmission lines.
- The Assessing Officer opined that open access charges paid by the assessee were in the nature of royalty as defined under section 9(1)(vi) and, accordingly, the assessee ought to have deducted TDS on such charges under the provisions of section 194J. Since, the assessee failed to deduct TDS on such charges, the Assessing Officer held assessee as an assessee-in-default and computed tax and interest under sections 201(1) & 201(1A).
- The Commissioner (Appeals) however, took a view that it was a case of sale of energy and, thus, the question of applicability of the provisions of section 194J did not arise. He thus set aside the assessment order.
- On revenue's appeal:

Held

- There is nothing on record to show that the assessee has used any patent, invention, model, design, secret formula or process or trade mark or similar property and associated rights in that property to say that the open access charges paid by the assessee were coming within the meaning of royalty as defined under section 9(1)(vi) of the Act. The Assessing Officer without understanding the provisions, brought in the concept of definition of royalty provided in clause (iva) of *Explanation 2* of section 9(1)(vi) of the Act, the use or right to use any industrial, commercial or scientific equipment to cover open access charges incurred by the assessee within the definition of royalty as defined under section 9(1)(vi) of the Act.
- Therefore, open access charges incurred by the assessee towards transmission of electricity from its plant to various parts of the country, through transmission lines owned by Power Grid Corporation of India is not a royalty and, accordingly, the assessee need not to deduct TDS under the provisions of section 194J. The Commissioner (Appeals) after considering the relevant facts rightly deleted additions made by the Assessing Officer.

- In the result, the appeal filed by the revenue is dismissed.