

No sec. 194C TDS if specified equipments supplied to MTNL were bought from third person

Summary – The Delhi ITAT in a recent case of Mahanagar Telephone Nigam Ltd., (the Assessee) held that where as per contract works awarded by assessee, equipments were supplied by contractor as per specification of assessee and for that purpose it had not used materials brought from assessee, activity carried out by contractor for assessee could not be categorised as 'work' under section 194C and, therefore, no deduction of TDS was required for same

Facts

- During the year under consideration, assessee MTNL had awarded contract works to one, HCL connected with the project of commonwealth games. It was a contract on turnkey basis for supply of equipments like P Router, Dispersion Compensation Unit, and for installation services, deployment, redeployment etc. Thus it involved two aspects; (i) supply of equipments, (ii) services of installation, deployment, redeployment. HCL had purchased said equipments from person other than such customer, *i.e.*, not from assessee MTNL.
- In order to verify the compliance by the assessee with reference to the TDS provisions under Chapter XVII-B, a query letter was issued to the assessee by which the assessee was required to furnish the details of TDS deducted on the above payments. The assessee was also required to submit the copies of acknowledgements of filing quarterly e-TDS on the payments made. The assessee was also required to submit the copies of acknowledgements of filing quarterly e-TDS returns for the concerned financial years. As per the Assessing Officer, the assessee had not furnished any information/response with reference to the query letter. As the matter involved time limitation, Assessing Officer had no alternative except to pass the order under section 201(1)/201(1A). As per information available, the details of contract work awarded by the deductor assessee, and the contract amount involved along with the amount of liability to deduct tax at source under section 194C/194J. In the absence of any response from the assessee, it was assumed by the Assessing Officer that the assessee had paid/credited all the abovementioned contract amount during financial year 2010-11 and accordingly the assessee was liable to deduct tax at source in accordance with the provisions of section 194C/194J from these amounts credited/paid.
- On appeal, the Commissioner (Appeals) allowed the appeal of the assessee.
- On revenue's appeal:

Held

- In this case the Assessing Officer had sent notice as per which details with regard to TDS deducted on the contract were asked for immediately to be filed *i.e.* on 30-3-2013 which being Saturday was a holiday for the department. The said notice was received by the MTNL on 28-3-2013 a Thursday, the days to follow were holidays as 29-3-2013 being Good Friday, 30-3-2013 was a Saturday and 31-3-2013 was a Sunday, hence the next working day was Monday *i.e.* 1-4-2013. However, the Assessing

Officer passed order under section 201(1)/201(1A) against the failure to deduct tax at source on 30-3-2013 which was a holiday without waiting for information to come in from the assessee. Being aggrieved, assessee, MTNL filed an appeal before the Commissioner (Appeals). Further, application requesting production of additional evidences under rule 46A has been filed by the assessee on 15-10-2014 wherein the respective copies of PO issued, separate invoices issued for both services and equipments purchased and details of TDS deducted on the services availed were submitted by the assessee. Further, a remand report was called for from the concerned Assessing Officer. The concerned Assessing Officer in the remand report dated 11-2-2015 has held that it was a work contract under section 194C and assessee-company is liable to deduct TDS on the said contract of services and equipments purchased and that the additional evidences furnished under rule 46A may not be admitted.

- Further, MTNL strongly objects the findings of the concerned Assessing Officer. During the year under consideration, MTNL has awarded contract to HCL connected with the project. As evident from the contract, it was a contract on turnkey basis for supply of equipments and for installation services, deployment, redeployment etc., thus it involves two aspects, (i) supply of equipments, (ii) services of installation, deployment, redeployment. The contract awarded to HCL on turnkey basis would include the supply of equipments like P Router, Dispersion Compensation Unit, etc. and for the services in relation to installation, deployment, redeployment, etc.
- It is also noted that MTNL in the relevant year had entered into agreement with HCL to supply equipments connected with the project of Commonwealth Games, 2010. However, the equipments supplied were as per the specifications of the assessee but the same have not been purchased from MTNL. HCL has purchased the said equipments from person other than such customer, *i.e.*, not from MTNL. Further, there was separate billing for the purchase of equipments from that of services provided by HCL to MTNL.
- It is clear that in respect of agreement for the supply of equipments, no TDS was deductible under section 194C as it amounts to a contract of sale. HCL supplied equipments as per the specifications of the assessee but the same have not been purchased from MTNL. HCL has purchased the said equipments from person other than such customer *i.e.* not from MTNL. Hence, TDS provisions would not fall applicable on the supply of equipments. Further since billing for the supply of equipments is separate from that of the services, TDS would not be deducted on the supply of equipments. Thus, TDS would only be liable to be deducted on the value of Professional services availed by the assessee under section 194J. The assessee has duly complied with the law by deducting TDS on services provided by HCL. Thus based on the abovementioned facts, provisions of law, case laws, circulations and clarifications it is clear that MTNL is not liable to deduct TDS on the said transaction of supply of equipments provided by HCL. However, the provisions of TDS would fall applicable on the services of installation, deployment and redeployment which had been duly deducted and deposited by the assessee. With regards to facts, further it is found that HCL supplied equipments as per the specifications of the assessee-company but the same have not been

purchased from appellant and also the billing for the supply of equipments has been separately done from that of the services. Furthermore as per the provisions stated under section 194C, tax shall be deducted at source on the invoice value excluding the value of material, if such value is mentioned separately in the invoice. Thus, in view of the above, it is clear that TDS would not liable to be deducted on the supply of equipments as the same is not being covered under the purview of section 194C. In the view of the abovementioned case laws, circulations and clarifications, it is clear that in respect of agreement for the supply of equipments, no TDS is deductible under section 194C. Further it is found that, TDS would only be liable to be deducted on the value of professional services of installation, deployment and redeployment availed by the appellant-company under section 194J which the assessee has already deducted and deposited. It is also clear that assessee is not liable to deduct TDS on the said transaction of supplying of equipments as per the provisions of section 194C. In the view of the clear provisions of section 194C, the assessee is not liable to deduct TDS on the supply of equipments by HCL, therefore, the Commissioner (Appeals) under the circumstances has rightly held that the action of Assessing Officer of holding assessee-company as in default was without any cogent basis. Accordingly, Commissioner (Appeals) has rightly gave the relief to the assessee in respect of the total amount, which does not need any interference, hence, the order of the Commissioner (Appeals) on the issue in dispute is upheld and the grounds raised by the revenue are rejected.