

## No sec. 194J TDS on reimbursement of exp. to HRTC for carrying out development work on behalf of assessee

**Summary –** The High Court of Himachal Pradesh in a recent case of H.P. Bus Stand Management & Development Authority., (the Assessee) held that where under an arrangement entered into between assessee bus stand management authority and State Road Transport Corporation, assessee's work would initially be carried out by staff of HRTC till assessee developed its infrastructure, payment by assessee to State Road Transport Corporation couldn't be said to be made for rendering of professional services and, therefore, no TDS was to be deducted since it was only reimbursement of expenses

### Facts

- The assessee-development Authority, an entity was established for development and management of bus stands within State of Himachal Pradesh. Prior to that, such work was being carried out by HRTC itself. Since the development authority had no independent establishment and infrastructure of its own to carry out its objects, the work of development authority was required to be carried out by employees of HRTC. The two entities decided to share their resources by arriving at an arrangement by which salaries of certain staff and other expenditure incurred by HRTC was to be shared proportionately.
- The assessee did not deduct any amount paid to HRTC in terms of section 194J.
- The Assessing Officer computed the assessee's income by adding the amount paid to HRTC as taxable income of the assessee.
- On appeal, the Commissioner (Appeals) held that the provisions of TDS *i.e.* section 194J were not applicable if it was only a case of reimbursement of expenditure. Since assessee was not paying lump sum charges to the HRTC which can be construed, it was only reimbursement of expenditure.
- On revenue's appeal, the Tribunal affirmed the order of the Commissioner (Appeals).
- On appeal to the High Court:

### Held

- Section 194J provides that any person, not being an individual or Hindu Undivided Family, who is responsible for paying to a resident any sum by way of fees *inter alia* for professional/technical services shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof, by whatever mode, deduct an amount equal to 10 per cent of the said sum as income-tax on income comprised therein. The section does provide for certain explanations with which we are not concerned. Noticeably, the said section itself explains/defines as to what is the meaning of expression 'professional services and fees for technical services'.
- Professional services have been explained to mean services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy

or technical consultancy or such other profession as is notified by the Board for the purposes of section 44AA and section 194J. *Explanation 2* to clause (vii) of sub-section (1) of section 9 has been stated to mean the explanation for 'fees for technical services'. Now when one examine the said clause, one finds 'fees for technical services' to mean any consideration for rendering any managerial, technical or consultancy services, not to include consideration for any construction, assembly, mining or like projects undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Salaries'.

- The arrangement *inter se* the development authority and HRTC was clear and simple. It was by way of a stop gap arrangement. Till such time the authority developed its infrastructure and recruited the staff, the work of development and management was required to be carried out by HRTC. Hence, employees of HRTC were called upon to continue to discharge such duties. It is in this backdrop, two entities decided to share their resources by arriving at an arrangement, whereby salaries of certain staff and other expenditure incurred by HRTC was to be shared proportionately.
- Such an arrangement arrived at between two entities cannot be said to be that of rendering professional services. No legal, medical, engineering, architectural consultancy, technical consultancy, accountancy, nature of interior decoration or development was to be rendered by HRTC. Similarly, no service, which can be termed to be technical service, was provided by HRTC to the development authority, so also no managerial, technical or consultancy services were provided. The arrangement was purely simple. The staff of HRTC was to carry out the work of development and management of the development authority till such time, the said authority developed its infrastructure and the expenditure so incurred by HRTC was to be apportioned on the agreed terms. It is only pursuant to such arrangement, the development authority disbursed the payment to HRTC and, as such, no amount of TDS was required to be deducted on the same. It is only a reimbursement of an expense so incurred by HRTC.