

Sum paid by 'UTV' to cable operators for airing of channels on agreed frequencies was liable to sec. 194C TDS

Summary – The High Court of Bombay in a recent case of UTV Entertainment Television Ltd., (the Assessee) held that In case of assessee carrying on business of broadcasting of television channels, payments of placement charges and subtitling charges would fall within meaning of 'work' covered in clause (iv) of Explanation to section 194C, and, thus, assessee was justified in deducting tax at source under section 194C while making said payments

Facts

- The assessee-company was carrying on business of broadcasting of Television (TV) channels. It operated certain TV entertaining channels. The assessee paid carriage fee/placement charges after deducting tax at source under section 194C.
- The Assessing Officer opined that the carriage fees and subtitling charges were in the nature of fees payable for technical services and, therefore, tax should have been deducted under section 194J. He thus passed an order under section 201(1)/201(1A) holding that expenses in question were not covered by section 194C but by section 194J.
- The Commissioner (Appeals) as well as the Tribunal set aside order passed by Assessing Officer.
- On revenue's appeal:

Held

- The first appellate authority has made in-depth consideration of the factual aspects. Reference to the factual aspects will be necessary to understand technicalities associated with carriage fees, editing expenses and dubbing charges. Firstly, it will be necessary to consider the nature of carriage fees or placement fees in the context of the nature of business carried on by the assessee.
- The Commissioner (Appeals) has recorded a finding of fact that the cable operators pay a fee to the assessee for acquiring rights to distribute the channels. It is pointed out that the cable operators face bandwidth constraints and due to the same, the cable operators are in a state to decide which channel will reach the end viewer at what frequency (placement). Accordingly, broadcasters make payments to the cable operators to carry their channels at a particular frequency. Fee paid in that behalf is known as "carriage fee" or "placement fee". The payment of placement fee leads to placement of channels in prime bands, which in turn, enhances the viewership of the channel and it also leads to better advertisement revenues to the TV channel.
- The agreements are entered into with the assessee by the cable operators for placement of channels on agreed frequencies on which the assessee wishes to place a particular channel. The placement fee is the consideration for providing choice of the desired placement of the channels.

That is how, channel placement charges are paid to the cable operators under the agreement. Under the agreement, the cable operators agree for placing a particular channel on agreed frequency band. As stated earlier, the assessee has deducted tax at the rate of 2 per cent at source by invoking section 194C while making payment towards placement fees to the cable operators/MSOs. If section 194J is to be applied, the deduction would be of 10 per cent.

- The Commissioner (Appeals) has gone through the method followed by the cable operators/MSOs. The Commissioner (Appeals) has also gone into the submission of the revenue that, in fact, section 194J would apply. In substance, the argument is that placement charges are basically for rendering technical service. The Commissioner (Appeals) has recorded a finding of fact on the basis of material on record that the placement charges are consideration for placing the channels on agreed frequency bands. It was found that, as a matter of fact, by agreeing to place the channel on any preferred band, the cable operator does not render any technical service to the distributor/TV channel. Reference is made to the standard fee paid for basic broadcasting of a channel at any frequency.
- The Commissioner (Appeals) has considered clause (iv) of the *Explanation* to section 194C which incorporates inclusive definition of 'work'. Clause (iv) includes broadcasting and telecasting including production of programmes for such broadcasting and telecasting. The Commissioner (Appeals) rightly found that if the contract is executed for broadcasting and telecasting the channels of the assessee, the same would be covered by section 194C as it falls in clause (iv) of the definition of 'work'. Therefore, when placement charges are paid by the respondent to the cable operators/MSOs for placing the signals on a preferred band, it was a part of work of broadcasting and telecasting covered by sub-clause (b) of clause (iv) of the *Explanation* to section 194C.
- As a matter of fact, it was found by the Commissioner (Appeals) that whether the payment is towards a standard fee or placement fee, the activities involved on the part of the cable operators/MSOs are the same. When placement fee is received, a channel is placed on a particular prime band. It was found that by an agreement to place the channel on a prime band by accepting placement fee, the cable operator/MSO does not render any technical service. As far as Tribunal is concerned, again the definition of work in clause (iv) of the *Explanation* to section 194C was looked into. A grievance was made by the revenue that there are no detailed findings recorded by the Appellate Tribunal. However, the Commissioner (Appeals) has recorded detailed findings on the basis of material on record and by referring to the findings, the Tribunal has expressed general agreement with the findings recorded by the first Appellate Authority. While affirming the judgment of the first Appellate Authority, it is open for the Tribunal to express such general agreement.
- Now, turning to the second grievance regarding subtitling charges, again the Commissioner (Appeals) has gone into the details of the factual aspects. Subtitles are textual versions of the dialogues in the films and television programmes which are normally displayed at the bottom of the screen. Sometimes, it is a textual version of the dialogues in the same language. It can also be a textual version of the dialogues in a particular language other than the language of the film or the

TV programme. Again the stand of the revenue was that this will be covered by section 194J and not by section 194C. The revenue has not made any grievance regarding applicability of section 194C to dubbing charges.

- The finding of fact recorded by the Commissioner (Appeals), which is confirmed by the Tribunal, is that work of subtitling will be covered by the definition of 'work' in clause (iv) of *Explanation* to section 194C. Reliance is placed by the Commissioner (Appeals) on the CBDT Notification dated 12-1-1977. The said Notification includes editing in the profession of film artists for the purpose of section 44AA. However, the service of subtitling is not included in the category of film artists. As noted earlier, sub-clause (b) of clause (iv) of the *Explanation* to section 194C covers the work of broadcasting and telecasting including production of programmes for such broadcasting or telecasting. The work of subtitling will be naturally a part of production of programmes.
- Apart from confirming the finding of fact recorded by the Commissioner (Appeals) on both the aspects on placement fee and subtitling charges, the Tribunal has noted that both sections 194C and 194J having introduced into the Act on the same day, it is observed that the activities covered by section 194C are more specific and the activities covered by section 194J are more general in terms. Therefore, for the activities covered by section 194C, section 194J cannot be applied being more general out of the two.
- In the alternative, a submission was canvassed by the revenue that the carriage fees or the placement charges are in the nature of commission or brokerage as defined in *Explanation* to section 194H. Further, in the alternative, it was submitted that carriage fees/ placement charges were in the nature of royalty covered by section 194J.
- As already discussed in detail the findings of fact recorded by the Commissioner (Appeals) as regards placement fees/carriage fees. As stated earlier, when services are rendered as per the contract by accepting placement fee or carriage fee, the same are similar to the services rendered against the payment of standard fee paid for broadcasting of channels on any frequency. In the present case, the placement fees are paid under the contract between the assessee and the cable operators/MSOs. Therefore, by no stretch of imagination, considering the nature of transaction, the argument of the revenue that carriage fees or placement fees are in the nature of commission or royalty can be accepted.
- Thus, as far as both the grounds of challenge are concerned, there are findings of fact recorded by both the authorities. The view taken by the Tribunal is correct. No question of law arises in the appeal. There is no merit in the appeal and the same is dismissed.