

Sec. 194J TDS on provision made for audit fees was required even if payment to be made was uncertain

Summary – The Chennai ITAT in a recent case of Citadel Fine Pharmaceuticals (P.) Ltd., (the Assessee) held that where assessee made provision for audit fees to account of payee, provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance under section 40(a)(ia)

Facts

- During relevant year, the assessee made provision for audit fees and claimed the same as deduction. The assessee's case was that the provisions of section 194J would not apply to audit fees, as the question of payment to the auditor would arise only after the signing of the accounts which took place after the year end.
- The Assessing Officer, however, proceeded to disallow the same under section 40(a)(ia) which was upheld by the Commissioner (Appeals).
- On second appeal:

Held

- On perusal of section 194J, it is found that tax is deductible at source either at the time of credit of expenditure to the account of the payee or at the time of payment whichever is earlier. In the instant case, the assessee had made provision for audit fees to the account of the payee which fact has been mentioned by the Commissioner (Appeals). Hence, the provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance under section 40(a)(ia) of the Act.
- The statutory auditor is appointed in the annual general meeting of the company by the shareholders and would hold office till the conclusion of the next annual general meeting. Hence the name of the payee (*i.e.* the auditor) is very well known to the assessee in order to make provision for audit fees by crediting to the said auditor's account. Admittedly the audit fees is an item of expenditure claimed by the assessee as an expenditure incurred on accrual basis during the year under appeal and this is based on the auditor's appointment in the annual general meeting or in any other extraordinary general meeting, as the case may be. Hence the argument of the assessee that the audit report is signed after the end of the year can not be accepted. Accordingly, the ground raised by the assessee is dismissed.