

Installation of set-top box by ISPs amounts to works contract; liable to section 194C TDS & not sec. 194J TDS

Summary – The Mumbai ITAT in a recent case of Bharat Business Channels Ltd., (the Assessee) held that Installation of set-top box by ISPs amounts to works contract under section 194C and no technical expertise are required so as to make assessee liable under provisions of section 194J

Trade discount granted to principal distributor could not be held as commission and, hence not liable for deduction of tax at source under provisions of section 194H

Facts

- The assessee-company was the service provider of Direct to Home [DTH] services in the name of Videocon d2h'. As the work of installing the set-top boxes and antenna for the purpose had to be carried out at various locations of the different subscribers, the assessee-company had entered into a contract/ agreement with various persons [Installation Service Providers (ISPs)].
- The Assessing Officer on perusal of details in this regard was of the view that the work relating to installation of hardware at the customer's/subscriber's premises was carried out by a technically skilled person as the software was to be synchronized with the TV set to provide the DTH services and other technical services were also to be rendered.
- He held that payment in the form of discounts given to the distributors/ dealers on sale of set-top boxes/ recharge coupons, etc. was 'brokerage or commission' in nature and ought to be subjected to TDS under section 194H at the rate of 10 per cent and payments made to the Installation Service Providers were in the nature of 'fees for technical services' and, hence, the same ought to be subjected to TDS under section 194J instead of section 194C as done by the assessee. Accordingly, he computed total non-deduction and short deduction of tax under section 201(1) and levied interest under section 201(1A).
- Commissioner (Appeals) held that assessee was required to deduct tax under section 194C for payment made to ISPs and that there existed principal to principal relationship between assessee-company and the distributors and the discount given could not be said to be 'commission' within the meaning of section 194H.

Held

- The work of installation of Set-Top Boxes and Antenna at the premises of the end-user is given as per the contract with Installation Service Providers (ISPs). The job of the Installation Service Provider is to go to the premises of the subscriber, to install Dish Antenna and Set-Top Box and connect them to the Television of the subscriber. The Installation Service Provider has to connect the Set-top Box to the Television by making few basic wiring connections. It does not require any special technical expertise or any technical degree and it can be done by any sound person on reading through the installation manual. Also, there is no specific qualification or recognized course required for

Installation Service Provider to become eligible for installation of Dish and Set-Top Box. They are given basic training/instructions for a short period to make them understand the process of Installation so that they can apply the same at the place of the subscriber. Accordingly, the Commissioner (Appeals) was justified in holding that assessee was required to deduct tax under section 194C. The Commissioner (Appeals) has dealt with the issue threadbare and after relying on various judicial pronouncements held that work of installation of Set-Top box amounts to 'works contract. The detailed finding so recorded by Commissioner (Appeals) are as per material on record which has not been controverted by the revenue by bringing any positive material. Accordingly, there is no reason to interfere in the order of Commissioner (Appeals) holding that installation of Set-Top Box amounts to works contract and no technical expertise are required so as to make the assessee liable under the provisions of section 194J.

- It is clear from the above terms and conditions of the agreement entered by the assessee which is in *para meteria* with the terms and conditions having been discussed by the Karnataka High Court in the case of *Bharati Airtel Ltd. v. Dy. CIT* [\[2015\] 372 ITR 33](#) and the Tribunal, in case of *Vodafone Essar Gujarat Ltd. v. Asstt. CIT* [\[2015\] 60 taxmann.com 214](#), there is no merit in the action of the lower authorities for treating the assessee in default in respect of non-deduction of tax at source on trade discount granted to principal distributor by holding the same as commission, and hence, liable for deduction of tax at source under the provisions of section 194H.