

Payment to contractor engaged in collection of data which doesn't mandate technical skills requires sec. 194C TDS

Summary – The Mumbai ITAT in a recent case of WTI Advance Technology Ltd., (the Assessee) held that where assessee-company, engaged in business of Information Technology/Information Technology enabled services, entered into an agreement with TCS for creation of Geographical Information Systems, in view of fact that in order to carry out work under said contract assessee outsourced non-technical work such as collection of data to various contractors, said work being in nature of 'works contract', assessee was justified in deducting tax at source under section 194C

Facts

- The assessee-company was engaged in the business of Information Technology/Information Technology enabled services. It entered into an agreement with TCS for creation of Geographical Information systems. The nature of work involved in the execution of the aforesaid projects involved both technical and non-technical work. The technical work was performed by the assessee with its employees who were technical personnel, and the non-technical/non-skilled work involving the collection of data, etc. was outsourced by the assessee to various vendors in the relevant locations for operational convenience.
- The assessee made payments to contractors after deducting tax at source under section 194C.
- The Assessing Officer opined that payments made by the assessee were in context of technical services, therefore, it was liable to deduct tax at source under section 194J and not under section 194C. He thus made proportionate disallowance under section 40(a)(ia) for short deduction of tax at source.
- The Commissioner (Appeals), however, taking a view that services rendered by contractors being non-technical in nature and falling under category of works contract, deleted disallowance made by Assessing Officer.
- On revenue's appeal:

Held

- It is found that TCS had entered into an agreement with the assessee-company for creation of Geographical Information system in the State of Maharashtra and Gujarat. As observed by the Commissioner (Appeals), the execution of the project involved both technical and non-technical work. Though the technical work was performed by the assessee through its employees who were technical personnel, but however, the non-technical and non-skilled work involving the collection of data etc. was outsourced by the assessee to various vendors in the relevant locations for operational convenience. The nature of such non-technical and supporting work that was outsourced by the assessee to the various vendors, involved the field survey for collection of names

of major roads/base map features; collection of names/attributes of assets data from ledger available with utility companies; collection of consumer data through contact survey by door-to-door survey etc. The nature of such work which was provided by the vendors included DGPS Survey for GCP collection; field survey and mapping; indexing etc.

- The observations of the Commissioner (Appeals) that though the terminology used in the agreement such as 'Technical audit of Distribution Transformer' would at the first blush give an impression that the same involved rendering of certain complex technical services by the vendor, but however, the same revealed the basic work of taking photographs of the transformers is correct. The view taken by the Commissioner (Appeals) that the activities performed by the vendors did not require any technical or professional knowledge, and the vendors had only deployed semi-skilled personnel to carry out the said work is correct.
- In this regard it would be relevant to point out that during the course of the hearing of the appeal neither any material, nor any such contention was advanced by the revenue which could persuade one to conclude that the aforesaid observations of the Commissioner (Appeals) being perverse and contrary to the facts available on record, were thus liable to be dislodged. The observations of the Commissioner (Appeals) that the Assessing Officer had relied mainly on the agreement and not on the actual work carried out by the vendors had also not been controverted by the department.
- The nature of the non-technical and supporting work carried out by the vendors *i.e.* (i) field survey of collection of names of major roads/base map features; (ii) collection of names/attributes of assets data from ledgers available with utility companies; and (iii) collection of consumer data through contact door-to-door survey etc. did not require any technical skill. Carrying out the aforesaid work by the unskilled and semi skilled labourers, no technical skill or industrial science would be involved. The work executed by the vendors could safely be brought within the sweep of 'carrying out any work through supply of labour' as contemplated in section 194C. The view taken by the Commissioner (Appeals) that as the payments made to the vendors for the work done by them by deploying semi-skilled personnel, did not involve any technical or professional knowledge on their part, the same could not be brought within the sweep of section 194J and had rightly been subjected to deduction of tax at source by the assessee under section 194C.
- The assessee had correctly deducted tax at source on the payment made to the vendors, therefore, no disallowance under section 40(a)(ia) as regards the same was liable to be made in the hands of the assessee. There is no infirmity in the order of the Commissioner (Appeals), and the same is upheld.
- The appeal of the revenue is thus dismissed.