

## TDS u/s 194C was required if no technical consultancy was rendered while providing assembling services to BEL

**Summary** – The Delhi ITAT in a recent case of Akon Electronics India (P.) Ltd., (the Assessee) held that where assessee entered into agreement with BEL, a Government of India Defence undertaking, for providing assembly services of raw material in respect of small component called RFU, since no technical consultancy had been offered by BEL, assessee was justified in deducting tax at source under sec. 194C while making payments to BEL

### Facts

- The assessee was wholly owned subsidiary of Akon Inc., USA. It entered into a teaming agreement with BEL, a Government of India Defence undertaking, for supply and co-production of microwave assembly (RFU's).
- During relevant year, the assessee made payments to BEL for carrying out assembling activities after deducting tax at source under section 194C.
- The Assessing Officer opined that the activities carried out by BEL involved technical staff and qualified engineers who were trained by assessee and, therefore, payments made for providing technical assistance would be covered by provisions of section 194J.
- The Commissioner (Appeals) however, held that the payments made by assessee did not fall under the definition of the term 'professional services' as no technical consultancy had been offered. He thus set aside order passed by Assessing Officer.
- On revenue's appeal:

### Held

- On a detailed perusal of the relevant clauses of the agreement, it is observed that in the Phase II, assessee will be supplying mechanical parts to BEL as per the prices agreed upon. Further assessee will be providing full manufacturing document and materials for modules M1 and M2 to BEL. Module M1 and M2 will be assembled by BEL, and shipped back to assessee. The assessee after inspection of assembled module M1 and M2 at BEL Ghaziabad unit, would export them to its parent company in US for integration. The final alignment of RFU would take place in US. It is observed that BEL was only providing assembly services of the raw materials provided by assessee in respect of a small component called as RFU which was as per the specifications of assessee.
- The Assessing Officer has alleged the activities rendered by BEL to the assessee within the ambit of section 194J of the Act *vis-a-vis* section 194C as per assessee. *Explanation 2 section 194J* carves out exemption, wherein any consideration made towards any construction, assembly, mining or like undertaken project by a recipient, would not be included within the purview of section 194J of the

Act. Section 194J refers to definition of 'fees for technical services', as having same meaning as per *Explanation 2 to sub-clause (vii) of sub-section (1) of section 9.*

- The agreement very clearly spells out that BEL undertook assembling of raw materials provided by assessee in respect of module M1 and M2, as per specifications provided by assessee. No doubt certain training has been provided by assessee to the engineers of BEL, however these rendering of training has been separately remunerated by BEL to assessee. Thus, payment received by BEL towards the work carried on under Phase II of the agreement, will not fall under the definition of the term professional services as no technical consultancy has been offered by BEL to assessee. Therefore, there is no fault in the observations of Commissioner (Appeals) in holding that the work undertaken by BEL is covered under the provisions of section 194C.
- In the result appeal filed by revenue stands dismissed.