

Charges paid to internet service provider to access internet on dedicated lease line not liable for sec. 194-I

Summary – The Kolkata ITAT in a recent case of SDV International Logistics Ltd., (the Assessee) held that where lease line charges were paid by assessee-company to internet service provider for faster internet access on dedicated lease line, said payment had been made for use of telecommunication services/connectivity for transmission of voice/data facility and not for use of any asset involved in provision of such facility/service covered in section 194-I, and, thus, assessee was not liable to deduct TDS under section 194-I on said payment

Facts

- The assessee-company was held to be liable to deduct tax at source from the payment of internet connectivity charges and specialised line rental under section 194J being in the nature of royalty by relying on *Explanations* 4, 5 and 6 to section 9(1)(vi) inserted by the Finance Act, 2012 with retrospective effect by the Assessing Officer.
- The Commissioner (Appeals) reversed said order holding that liability to deduct tax at source was governed by section 9(1)(vi) as it existed before the Finance Act, 2012 and, thus, assessee could not be held to be liable to deduct tax at source by relying on the subsequent amendments made in the relevant provision with retrospective effect.
- However, having held that the assessee was not liable to deduct tax at source from the amount paid towards internet connectivity charges and specialised line rental under section 194J, the Commissioner (Appeals) held that the amount of specialised line rental paid by the assessee was covered by section 194-I and directed the Assessing Officer to treat the assessee-company as the assessee in default for its failure to deduct tax at source from the said amount under section 194-I.
- On appeal :

Held

- Assessee cannot be held to be liable to deduct tax at source under section 194J by relying on subsequent amendments made in section 9 (insertion of Explanations 4,5, and 6 to section 9(1)(vi) by Finance Act, 2012) with retrospective effect. Thus, Commissioner (Appeals) was justified in holding that assessee was not liable to deduct tax at source from amount in question paid towards internet connectivity and specialised line rental under section 194J.
- The lease line charges were paid by the assessee to the internet service provider for faster internet access on dedicated lease line and as such the said payment had been made for use of telecommunication services / connectivity for transmission of voice/data facility provided by the vendors and not for use of any asset involved in provision of such facility/ service covered in section 194-I. The assessee was not liable to deduct tax at source from the payment in question under

section 194-I as held by the Commissioner (Appeals) and it could not be treated as the assessee in default under section 201 (1)/201(1)A.