

ITAT remanded matter to determine TDS liability on payment for AMC after examining relevant doc.

Summary – The Lucknow ITAT in a recent case of Jagran Prakashan Ltd., (the Assessee) held that where assessee did not bring entire vouchers on record in respect of expenditure incurred on Annual Maintenance contract (AMC) for repairs and maintenance of computers installed at its office premises, question as to whether assessee was required to deduct tax at source under section 194C or 194J, was to be remanded back for disposal afresh

Facts

- During relevant year, assessee incurred expenditure of account of Annual Maintenance Contract (AMC) for repairs and maintenance of computers installed at its various office premises.
- The assessee deducted tax at source under section 194C claiming it to be a case of contractual payments made to computer companies for executing works contract.
- The Revenue authorities, however, held that the payments made by assessee for various AMC were for various services that were nothing but in the nature of professional and technical services though defined by a contract.
- Thus, according to authorities below, assessee was required to deduct tax at source under section 194J while making payments in question.
- On second appeal:

Held

- The proposition of law is crystal clear that any payment made for any professional and technical services would attract TDS under section 194J and if the payments have been made for works contract or any contractual payment, the same would be covered within the purview of section 194C of the Act. Certainly, there is difference of rate as prescribed within the statute *i.e.* 10 per cent under section 194J and 2 per cent under section 194C. It was the argument of the assessee that they have made all the payments for AMC and there does not involve any professional or technical skill and it is a payment made on contractual basis. The revenue, on the other hand, has highlighted the fact that though some vouchers filed in the paper book are for AMC payment, however, as has agreed by the assessee, entire bills and vouchers were not placed before the authorities below for verification and, therefore, revenue raised strong apprehension that the matter needs further verification of entire vouchers to find out whether whole of the payments were for AMC purpose.
- There is no doubt so far as the proposition of law is concerned which is enumerated in a crystal clear manner in both the provisions. However, to ascertain the fact a detailed factual verification is necessary and, therefore, the order of the Commissioner (Appeals) is set aside and the matter is restored back to the file of the Assessing Officer to verify the entire vouchers relating to payment

and if it was found that the entire payments were made for works contract and were in the nature of contractual payments without involving any technical or professional skill or knowledge, in such circumstances assessee would be covered within the purview of section 194C of the Act.

- In the result, appeal of the assessee is allowed for statistical purposes.