

Payments to various artists participating in reality shows are liable for sec. 194C TDS & not sec. 194J TDS

Summary – The Cochin ITAT in a recent case of Malayalam Communications Ltd., (the Assessee) held that where assessee made payments to various artists like singers, musicians etc who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source under section 194C while making payments in question

Facts

- During relevant year, assessee made payment to various artists like singers, musicians etc who participated in the reality shows hosted by it as guests or judges.
- The assessee deducted tax at source under section 194C while making said payments.
- The Assessing Officer opined that payment were made to payee for rendering their professional services as artists and, thus, tax was liable to be deducted at source under section 194J.
- The Commissioner (Appeals) upheld order passed by Assessing Officer.
- On second appeal:

Held

- The question arises is whether on the facts and circumstances of the present case, section 194C or 194J would be attracted. The contention of assessee is that there is difference between artist and film artist. An artist can be called a film artist, if he/she renders his or her services pursuant to production of film. However, an artist will not be a film artist if he/she entertains people not involved in production of film.
- The contention of the revenue is that assessee made payment in relation to various artists in reality show conducted by the assessee and TDS is to be paid under section 194J of the Act. The case of the revenue is that making of the programmes in television involves utilization of professional services and that there are several technical aspects of producing such programmes. Therefore, the view expressed by the Commissioner (Appeals) should be accepted and it is to be upheld. It is opined that the assessee paid remuneration to various persons in connection with reality shows telecasted by the assessee and it was not involved in production of any films and recipients of payments were not engaged by the assessee in any of the activities as enumerated under section 194J.
- Hence, the payment to the artists is not covered by 194J as the payment is not related to production of cinematograph film. The services rendered by the artists are not covered by professional services as defined under section 194J of the Act. As seen from the Explanation, services rendered by a person in connection with production of cinematograph film should be liable to deduct TDS under

section 194J of the Act. A person who is engaged in production of reality show cannot be equated with a person engaged in the production of cinematograph film.

- Hence, it is not possible to accept the contention of the revenue that payments made to artists who participated in reality shows produced for television will fall outside the realm of section 194C read with. Explanation III of the Act. It would fall under section 194C of the Act and not under section 194J of the Act. Since the assessee deducted TDS under section 194C of the Act, there is no infirmity in the action of the assessee.
- In the result, the appeal of the assessee is allowed.