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## **Maintenance contracts that involve services that are fairly simple would attract withholding under section 194C; vehicle hiring cost would have to be segregated into car rental and payment for other services for the purpose of tax withholding**

### **In brief**

- The Mumbai Income-tax Appellate Tribunal (Tribunal), in its recent ruling in the case of Bharat Sanchar Nigam Limited<sup>1</sup>, has held that maintenance contracts which involve technical services which are fairly simple or low calibre would attract tax withholding under section 194C of the Income-tax Act, 1961 (the Act).
- The Tribunal also held that when vehicle hiring is on a regular basis and the vehicle is at the disposal of the taxpayer, it would presuppose the nature of

*rent* as clarified by Circular No 715 dated 8 August 1995 and tax would be deductible under section 194-I of the Act. Furthermore, the Tribunal held that chauffeur services included in vehicle hiring along with fuel cost of transportation would be liable for tax withholding under section 194C.

### **Facts**

- The taxpayer, in the business of providing telecommunication network as required for its telecom business across the country, entered into comprehensive maintenance contracts with various parties for various equipments, installations, *viz.* air conditioners, lifts, vehicles and engine alternator services etc., for smooth functioning of its business.

<sup>1</sup> ITO v. Bharat Sanchar Nigam Limited [TS-257-ITAT-2014(Mum)]

- The taxpayer had also entered into an arrangement for vehicle hiring for pick and drop facility for its employees.
- During the course of withholding tax proceedings, the Tax Officer (TO) held that the work performed under the maintenance contracts was technical in nature, attracting withholding under section 194J of the Act.
- The TO also held that vehicle hiring would be classified as rent in terms of Circular No 715 dated 8 August 1995 and would attract withholding under section 194-I of the Act.
- The Commissioner of Income-tax (Appeals) [CIT(A)] reversed the TO's order.
- Aggrieved, the revenue filed an appeal before the Tribunal.

### **Issues before the Tribunal**

- Whether, in the case of maintenance contracts, tax withholding had to be done under section 194J instead of section 194C of the Act?
- Whether, in case of vehicle hiring contracts, tax withholding has to be done under section 194C or 194-I of the Act?

### **Taxpayer's contentions**

- Payment for maintenance contract was towards 'work' as defined under section 194C of the Act and hence attracted the provisions of that section.
- Reliance was placed on Circular No. 715 which clarified that routine, normal maintenance contracts, which do not involve rendering of technical services, were covered by section 194C.

- Payments towards 'vehicle hiring' attracted deduction of tax at source under section 194C. In this connection, reliance was placed on various Central Board of Direct Taxes (CBDT) circulars<sup>2</sup>.

### **Revenue's contentions – Maintenance contracts**

- The work for maintenance contracts was of technical nature and hence tax should be deducted under section 194J of the Act.
- The payment for vehicle hiring would tantamount to rent and tax had to be deducted under section 194-I of the Act.

### **Tribunal Ruling**

#### ***Maintenance contracts***

- The word 'work' stood defined under Explanation III to section 194C in an inclusive manner to include provision of certain specified services. The maintenance work would, therefore, clearly fall within the ambit of 'work' as defined under section 194C of the Act.
- Reliance was placed on the judgment of Tata AIG General Insurance Co. Ltd.<sup>3</sup> wherein it had been held that what was relevant was the nature of work for which the payment was made, and not to whom it was made. Work was normal regular work for the persons in their respective fields. For example, a car mechanic repairing a car, or an electrician fixing an electrical problem.

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<sup>2</sup> CBDT Circular No. 715 dated 08.08.1995, No. 558 dated 28.03.1990, No. 1/2008 dated 10.01.2008, and No. 681 dated 08.03.1994

<sup>3</sup> Tata AIG General Insurance Co. Ltd. v. ITO [2011] 43 SOT 215 (Mumbai-Tribunal)

- Accordingly, payment for maintenance contract was for normal work and hence was correctly classified for withholding under section 194C of the Act.

### ***Vehicle hiring***

- Section 194-I of the Act defined rent, and a vehicle or motor car would stand to be included within the purview of the words 'plant' or 'machinery'.
- The arrangement in the present case was to make available a car (vehicle) for a designated person or class of persons, for a particular time/use, coupled with other facilities at the disposal of the user.
- Therefore, the arrangement was not towards the provision of carriage services, as held by CIT(A), but for making cars available to the taxpayer's personnel.
- Accordingly, the arrangement for providing cars to the taxpayer's personnel would be covered by section 194-I of the Act.
- Since the arrangement also included making available the services of a chauffeur and meeting the fuel cost of transportation, payment towards those services could not be considered as car rental.

- The payment would need to be broken up between car rental and payment towards other services. The payment towards the car rental would be under the purview of section 194-I of the Act.

### **PwC's observations**

- This decision relates to assessment year (AY) 2007-08 to AY 2009-10 when the withholding rate under section 194C of the Act was 2%, while the corresponding withholding rate under section 194-I of the Act was 10% (the withholding rate for rental of plant and machinery has been changed to 2% w.e.f. 1 October 2009).
- Considering various conflicting High Court<sup>4</sup> and Tribunal<sup>5</sup> pronouncements, a taxpayer should carefully determine the withholding tax liability in a case of vehicle hire and maintenance contracts. It may be prudent to bifurcate the payment towards vehicle hiring and other services and discharge the withholding tax liability accordingly.

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<sup>4</sup> Three Star Granites Pvt Ltd v. ACIT [TS-606-HC-2013]

<sup>5</sup> ITO v. GAIL (India) LTd. [TS-168-ITAT-2014(Ahmedabad)]

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