

Erection, installation, testing and commissioning charges not taxable as FTS

March 12, 2018

In brief

In a recent ruling,¹ the Delhi bench of the Income-tax Appellate Tribunal (Tribunal) held that the deployment of technical personnel for execution of erection, installation, testing and commissioning contracts could not be regarded as supply of technical services.

In detail

Facts

- The taxpayer was an Indian company engaged in the business of generation of power/ implementation of power projects.
- The taxpayer had entered into a contract with a government company for availing transportation, insurance, erection, installation, testing, commissioning services and withheld tax on the payments under section 194C of Income-tax Act, 1961 (Act).
- Subsequently, the tax officer (TO) alleged that payment towards the previously mentioned services was in the nature of “fees for technical services” (FTS) subject to tax withholding under section 194J of the Act.

- On appeal, the Commissioner of Income-tax (Appeals) [CIT(A)] upheld the TO’s order.
- Aggrieved by the CIT(A)’s order, the taxpayer appealed before the Tribunal.

Issue before the Tribunal

Whether the TO was correct in holding that the payment made by the taxpayer for previously mentioned services was liable to tax withholding under section 194J of the Act?

Taxpayer’s contention

The taxpayer contended that the previously mentioned services was covered under the provisions of section 194C of the Act. These services involved “construction, assembly, mining and like projects,” which fell within the exclusion of FTS, as defined in Explanation 2 to section 9(1)(vii) of the Act.

Revenue’s contention

- The Revenue contended that the previously mentioned services was complex tasks required to be performed by technically competent manpower. Therefore, the amount paid was in the nature of FTS under section 9 (1)(vii) of the Act, requiring tax withholding under section 194J of the Act.

Tribunal’s ruling

- The Tribunal observed that the Punjab and Haryana High Court² had decided an identical issue, where it was held that the technical personnel deployed for execution was not engaged for supply of technical services to the customer, but to satisfy the customer that the work had been performed as per contractual specifications.

¹ ITA No. 2922 to 2924/Del/2016

² 390 ITR 322

- The services under consideration required the deployment of technical personnel; however, the significant aspect was that the technical personnel was not deployed for and on behalf of the customer, but was deployed for and on behalf of the contractor, to ensure customer satisfaction.
- The Tribunal, relying on the above judgement, decided the issue in favour of the taxpayer and reversed the findings of the lower

authorities.

- Further, the Tribunal also observed that the Revenue was not correct in arguing that if a contract did not fall within the ambit of section 194C, it must be deemed to fall within the ambit of section 194J. Sections 194C and 194J are independent provisions.

The takeaways

- This ruling is relevant for the principle that sections 194C and 194J are independent provisions and a contract if

does not fall within the ambit of section 194C, does not mean that it is deemed to fall within the ambit of section 194J.

- This ruling reaffirms that the facts and the terms of an agreement would determine the purpose of the technical assistance and subsequent tax liability of similar payments.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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