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News Alert
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No withholding tax under section 194C on payments by multi-system operators to channel companies

In brief

In a recent case, of Bal Kishan Gupta¹ (the assessee), the Agra Bench of the Income-tax Appellate Tribunal (the Tribunal) held that the assessee, a multi-system operator (MSO), is not liable to withhold taxes under section 194C of the Income-tax Act, 1961 (the Act) on payments made to channel companies for subscription charges. Channel companies are involved in broadcasting while the assessee is merely a distributor.

Facts

- The assessee is a proprietary concern M/s Varun Cable Network and distributes various TV channels through cable.
- The assessee entered into written contracts with channel companies under which he pays subscription charges according to the terms and conditions of the agreements.
- The assessing officer (AO) stated that channel companies provided broadcasting services covered within the definition of work given in Explanation III to section 194C(1) of the Act. The invoices raised by channel companies also mentioned services rendered as 'broadcasting'.

¹ ITO v. Bal Kishan Gupta [TS-213-ITAT-2013 (AGR)]

- The assessee had not withheld tax at source on the payments made to these channel companies on account of subscriptions charges as provided under section 194C of the Act.
- The AO disallowed the expenditure under section 40(a)(ia) of the Act for the AYs 2007-08 and 2008-09, on the basis that no taxes were withheld under section 194C of the Act on such payments.

CIT(A)'s order

- The Commissioner of Income-tax (Appeals) has elaborately discussed the process involved in whole business of channel distribution as follows:
 - Various TV channels like Zee, Sony, ESPN, etc beam their programmes to satellites.
 - These programmes are downloaded in packages (encrypted form) by MSOs or cable operators (COs).
 - MSOs or COs transmit these programmes to their subscribers.
 - Subscribers pay a particular amount as fee every month to the MSO or CO.
 - Monthly subscriptions are pooled together by the MSO or CO and forwarded to various programme networks and channel operators like Zee, Sony, etc.
- The CIT(A) held that the relationship between channel companies and the assessee is more akin to a manufacturer and a distributor rather than a contractor and a sub-contractor.
- The assessee is merely the distributor because he distributes these channels to various households through a set-up of instruments provided by channel operators.

- If the entire transaction is considered as a service contract, then channel operators are the main contractors providing service (channel) to the public through MSOs or COs. In such a case, channel operators will be liable to withhold tax on payments to MSOs or COs and not *vice versa*.

Issues before the Tribunal

- Whether transaction between the assessee and channel providers is similar to a manufacturer and a distributor rather than contractor and subcontractor?
- Whether there is any obligation on the part of the assessee to comply with the provisions of section 194C of the Act?

Revenue's contentions

- Payments made by the assessee to the channel companies were classified as broadcasting services. Therefore, the services will get covered under the definition of 'work' as defined in section 194C of the Act and the assessee was liable to withhold tax at source.
- Since no tax was withheld under section 194C of the Act, the provisions of section 40(a)(ia) of the Act are applicable and the amount on which no tax has been withheld is not deductible in computing the income chargeable under the head 'profits and gains of business or profession'.
- It relied on the Punjab and Haryana High Court judgement in the case of Kurukshetra Darpans (P) Ltd.² wherein it was held that tax was to be withheld under section 194C of the Act on the payments made to the licensor for obtaining TV signals for cable TV network owned by the assessee.

² Kurukshetra Darpans (P) Ltd. v. CIT [2008] 217 CTR P&H 326

Tribunal Ruling

- On perusal of the agreement, the following was noted:
 - The assessee was distributing the subscribed channels without cutting, editing, dubbing, scrolling or any other modification, alteration, addition, deletion or variation.
 - The channel companies are the owners and broadcasters of the subscribed channels.
 - Broadcasting and telecasting is done by the channel owners and not by the assessee.
 - The assessee is not authorised to produce or broadcast any programme.
- The Tribunal noted that the assessee distributes signals through a digital satellite receiver and the ultimate broadcasting is done by the CO who provides connection to the customers. The signals taken from channel owners and given to CO in an encrypted form. In such a situation, it cannot be said that the assessee is engaged in broadcasting and telecasting.
- Broadcasting and telecasting requires registration and necessary permission from the Ministry of Information and Broadcasting (MoIB) for telecasting TV channels. In this case, the channel companies have obtained the said permissions and registrations, whereas the assessee does not have any such registration.
- The Mumbai Tribunal's decision in the case of NGC Network (India) (P) Ltd.³ was referred to, wherein it had been held that broadcasting and distribution are different. Thus, in the case under consideration, broadcasting work was carried out by the channel companies and not by the assessee.

- In the case of Kurukshetra Darpan (P) Ltd. (above) relied upon by the AO, the CO was engaged in broadcasting and giving signals to the customers whereas in the case under consideration, the assessee-MSO received packed signals from channels and delivered it to the CO without any modification.

PwC's observation

In this instance, the Tribunal held that the assessee was not providing broadcasting services or signals to the ultimate consumer. Therefore, there was no broadcasting involved. The decision of the Punjab and Haryana High Court in the case of Kurukshetra Darpan (P) Ltd. (above) has also been distinguished on facts as in that case, the CO provided signals to the ultimate consumer and was held to be providing 'broadcasting' services so as to attract provisions of section 194C of the Act, whereas in the case of an MSO, the signals were received in a packed form and distributed to COs without modification.

³ ACIT v. NGC Network (India) (P) Ltd. [2011] 10 Taxman 140 (Mum-Trib)

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