

Sum paid for transmission of electricity along with maintenance of meters won't be FTS - sec. 194C attracted

Summary – The Hyderabad ITAT in a recent case of Central Power Distribution Co. of A.P. Ltd., (the Assessee) held that payment made for transmission of electricity alongwith maintenance of metering system, noting down meter reading, sealing and resealing of meters, etc. cannot be treated as fee for technical services; therefore, provision of section 194J do not apply and TDS is to be deducted under section 194C.

Facts

- The assessee was a power purchasing and distribution company.
- The assessee deductor had paid Rs. 174 crores to the owner of transmission lines network, viz., APTRANSCO as transmission and State load distribution centre charges. On payment, the assessee deducted tax at source under section 194C at rate of 2 per cent.
- As per the Electricity Act, 2003, APTRANSCO was required to provide access to its transmission system, in other words transmission network or transmission equipment, 'for use against payment of transmission charges'.
- The Assessing Officer held that for using the transmission lines network the amount paid was in the nature of royalty. As it was a case of mere use of transmission equipment and not possession of it. Thus, according to the Assessing Officer, the transmission and SLDC charges squarely would fall within definition of royalty and the assessee was under the obligation to deduct tax under section 194J on such payment at rate of 2 per cent. He also levied tax and interest of Rs. 9,76,15,240 and Rs. 5,12,48,003 under section 201(1) and 201(1A).
- On appeal, the Commissioner (Appeals) observed that there was no uniformity or consistency in the treatment of the transmission charges for the purpose of TDS provisions and there had been no decisions by any High Courts. He placed reliance on the decision of Income-tax Appellate Tribunal, Jaipur Bench in case of *Jaipur Vidyut Vitran Nigam Ltd. v. Dy. CIT* [\[2009\] 123 TTJ 888](#) wherein it was held that payment made for transmission of electricity cannot be treated as fee for technical services. Therefore, the provisions of section 194J do not apply.
- On cross appeals to the Tribunal:

Held

- There are plethora of judgments where the Tribunal has taken a consistent view that the fees paid for transmission charges paid to the transmission company were neither in the nature of fees for technical services nor rent and therefore the same do not come under the purview of sections 194J and 194-I of the Act. Being so, payment of transmission charges cannot be considered as fee for technical services and the Commissioner (Appeals) has taken a correct view that the payment of

transmission charges are not to be considered for deduction of TDS from the transmission charges under section 194J/194-I.

- From the assessee's agreement with APTRANSCO, it is noticed that the services rendered by the payees not only included the services in connection with transmission of the power but also several other distinct services such as maintenance of metering system, noting down meter reading, sealing and resealing of meters etc. It was not confined only to purchasing power by the assessee from the generation company and selling it to consumers through transmission network. It is the nature of services which decides about the section under which tax is deductible, if required. Being so, the assessee is liable to deduct TDS under section 194C. If it is deducted, the assessee is not considered as defaulter under section 201 and 201(1A). With the above observation, all the departmental appeals stand dismissed.