

Acquisition of right to telecast a movie via satellite for 99 years held as sale; not liable to TDS

Summary – The Chennai ITAT in a recent case of Ganapathy Media (P.) Ltd., (the Assessee) held that Acquisition of right to telecast a movie via satellite for 99 years held as sale; not liable to TDS

Facts

- The assessee-company was engaged in the business of buying and selling of satellite rights of the feature films. It was granted satellite rights to telecast a movie for a period of 99 years.
- The Assessing Officer took a view that assessee was required to deduct tax at source under section 194J while making payment for acquiring said rights.
- In view of assessee's failure to deduct tax at source, the Assessing Authority disallowed payment in question by invoking provisions of section 40(a)(ia).
- The Commissioner (Appeals), however, taking a view that it was a case of sale of cinematographic film, deleted disallowance made by the Assessing Officer.
- On revenue's appeal:

Held

- The only issue arises for consideration is whether the right to telecast the cinematographic film through satellite is a mere assignment of right or it is a purchase of the feature films. The assessee claims that it amounts to purchase of films since the satellite right was given to the assessee for 99 years. However, the revenue claims that it is only an assignment, therefore, the assessee has to deduct tax under section 194J. It was noted from assignment agreement that the parties to the agreement were described as 'assignor' and 'assignee' and not as vendor and purchaser. The agreement shows that an exclusive right for broadcasting the films through satellite television was given to the assessee for 99 years.
- Whenever a payment is made by way of fees for professional service or fees for technical service or remuneration fees or commission to a Director of a company or respectively or any sum referred to in section 28(va) of the Act, deduction has to be made at 10 per cent of the sum as tax. In this case, the assessee claims that it is neither a fee nor a royalty. The assessee claims that it is only a purchase price paid to the owner of the film. However, the revenue claims that what was given to the assessee is a right to telecast a film for a definite period, therefore, what was paid was royalty. Therefore, tax has to be deducted under the provisions of section 194J.
- In this case the right transferred to the assessee is to telecast the feature film in extra terrestrial areas for a perpetual period of 99 years. As found by the High Court in the case of *K. Bhagyalakshmi v. Dy. CIT* [\[2014\] 221 Taxman 225/\[2013\] 40 taxmann.com 350 \(Mad.\)](#) the copyright subsists only for

a period of 60 years. Therefore, the right given to the assessee beyond the period of 60 years has to be treated as sale of the right for cinematographic film.

- In view of the above, there is no infirmity in the order of the Commissioner (Appeals). Thus, the order of the lower authority is upheld.