



## Payment to toll collecting agencies is liable for TDS under Section 194C and not under Section 194H of the Income-tax Act

### Background

Recently, Vishakhapatnam Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Project Director, NHAI<sup>1</sup> (the taxpayer) held that tax needs to be deducted from the payment made to toll collecting agencies under Section 194C of the Income-tax Act, 1961 (the Act).

The Tribunal observed that the contract between the taxpayer and the toll collecting agency was a mere contract for supplying labour for execution of work contract and not a contract of agency.

### Facts of the case

- National Highway Authority of India (NHAI) engaged in carrying out the development and maintenance of highways across the country, availed the services of toll agencies for collection of toll fees.
- It deducted tax at 2.266 percent under Section 194C of the Act in respect of payment for above services.
- The taxpayer contended that the nature of work (i.e. toll fee collection) was a mere supply of labour for execution of work as defined under Section 194C of the Act. The consideration for this is paid in terms of total salary/wage paid to the number of personnel deployed for the work plus 14 percent service charge. Unlike commission which is carved out from the value of the transaction, in the given case the consideration is paid in terms of salary/wages plus some percentage of service charge.

- The Assessing Officer (AO) observed that the contract between NHAI and agencies is a contract of agency i.e. agents appointed on behalf of NHAI to collect toll fee. Therefore, any payment made in pursuance of the said contract of agency partakes the nature of commission within the meaning of Section 194H of the Act. Further, the commission can be paid on a different yardstick than as a fixed percentage of the value of a contract.
- The Commissioner of Income-tax (Appeals) [CIT(A)] held that it is a simple work contract on principle to principle basis and not on principle to agent basis. Therefore, such payments would be covered under Section 194C and not under Section 194H of the Act.

### Tribunal's ruling

- The Tribunal observed that in terms of the agreement, the collecting entity is liable to provide the services of toll fees collection work under its own organisational structure and on deployment of personnel, without binding NHAI for its employees.
- Normally, the commission is paid in terms of value of the transaction, whereas in the given case, consideration is paid in terms of salary payable to the personnel deployed plus the service charge of 14 percent. The contract between the taxpayer and the agencies is a mere contract for the supply of labour for execution of work contract as defined under the provisions of Section 194C. It has all the ingredients of a contract of principle to principle basis and it is not a contract of an agency as defined under Section 194H of the Act.

<sup>1</sup> DCIT v. Project Director, NHAI (ITA No.69 & CO No. 60/Vizag/2013) – Taxsutra.com

## Our comments

The applicability of Section 194C v/s. 194H has been a subject matter of litigation before the Courts/Tribunal. While the tax department treats the payments under service contract as those of contract of agency, the taxpayer argues that it is purely a work contract. Factually, it is the contractual or other arrangement between the parties, which will determine whether the relationship is that of principal and agent or that of allotment of the work contract.

In the instant case, Vishakhapatnam Tribunal analysed the terms of an agreement to find the true nature of payment and observed that the contract was merely a work contract and not a contract of agency.

The Bombay High Court in the case of Jaslok Hospital and Research Centre<sup>2</sup> dealt with the issue of whether the tax is to be deducted on operating and administrative charges under Section 194H or Section 194C of the Act. The High while upholding the factual observation of the Tribunal, observed that there was no principal and agent relationship, but it was an independent management and administrative work and hence, Section 194H of the Act is not attracted.

The taxpayer should ensure that the contractual terms are adequately worded to bring out the real nature of transaction/relationship between the parties, which will enable to determine withholding obligation.



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<sup>2</sup> CIT v. Jaslok Hospital and Research Centre [2015] 377 ITR 138 (Bom)

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