I Case Study on Section – 194J (JG)

194J – Payments by Non-residents to Residents

Under section 194J, any person including specified individuals and HUF responsible for paying fees professional services or FTS to a resident is liable to deduct tax at source. With the globalisation of the Indian economy, many Indian residents render professional services to non-resident in or outside India. Apparently, therefore section 194J makes it obligatory for such non-resident payers to deduct tax at source for payments to such residents. This would lead to unintentional defaults by such Non-residents as they might not be aware of such provisions. In any case, how do the Revenue Authorities track such compliance/ non-compliance?

II. Case Study on Section 194C v. 194I – Contract payments v. Rent (AV)

An assessee is in the business of running “Passenger Launch Service”. Under the contract with Port Trust Authorities (PTA), the contractor is obliged to make the launches available on round trip basis (return trip basis) for ferrying the employees of PTA, as also other passengers. The proceeds from the sale of tickets collected by the contractor have to be handed over to the PTA. As per the contract, the Passenger Service Launch has to
make the round trips as per the scheduled timings irrespective of the number of passengers. Also, irrespective of the fare collection in each round trip, the hire charges payable by the PTA to the contractors for the round trips are fixed, which are dependent on the fair / foul season and the time of the day.

The entire operating staff of the Passenger launch works for and is on the payroll of the contractor. Such operating staff is accountable to the contractor and is responsible for operating the launch service as per the expertise available with them.

Under the Tax Law Amendment Act, 2006, the meaning of rent u/s 194I is:

“rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any, -

(a) land; or
(b) building (including factory building); or
(c) land appurtenant to a building (including factory building); or
(d) machinery; or
(e) plant; or
(f) equipment; or
(g) furniture; or
(h) fittings,

Whether or not any or all of the above are owned by the payee.

The PTA is of the view that:
1. The Passenger service launch is neither machinery nor plant nor equipment and hence the rent payable by them is not covered u/s 194I. They, therefore contend that such contract payments are payments u/s 194C and hence the appropriate rate of TDS is not 15/20% (10% as per Finance Bill, 2007) u/s 194I but 2% u/s 194C.

2. In any case, it is contended by the PTA that even if the Passenger Service Launch was considered as the machinery or plant or equipment, the contract payments would still not be covered u/s 194I because the payments are not made for use of such asset, but are made for carrying out work under a contract i.e. for rendering services under a contract.

III. Case Study on Section 40a(ia) – Deductibility of specified expenditure (JG)

Section 40a(ia) lays down that the expenditure mentioned therein, viz., interest, commission or brokerage, rent, royalty, fees for Professional services or fees for technical services or payment to a contractor / sub-contractor on which tax is deductible at source under chapter XVII-B but has not been deducted or after deduction not been paid, would not be allowed as a deduction in computing the Business income of the payer – assessee till such TDS is paid within the specified time lines.

What are your views on applicability of Section 40a(ia) on the following fact pattern?

a) Tax has been deducted at source at the rates prescribed in the section but no surcharge or education cess has been deducted.

b) Tax and surcharge has been deducted at source but no education cess has been deducted.
c) There are arithmetical errors in calculation of TDS leading to short deduction.

d) The payment of expenditure is made on 31st March 2007 and the TDS thereon has been paid by 31st May 2007.

e) Presuming that, prima facie, there is an overlap of sections for certain expenses, the payer has deducted tax at lower of the prescribed rates e.g. refer case study – 2.

IV Case Study on Section –194J v. 194C  FTS v. Royalty v. Contract payments (AV)

T Ltd. is an Indian company engaged in the business of providing cellular mobile services to its subscribers. It has entered into agreements with certain land line operators to provide connectivity to its subscribers between the cellular phones and the land lines. Similarly, it has entered into agreements with other cellular operators within and outside the country to provide roaming services to the subscribers of each other.

Thus, T Ltd. is liable to pay for the services of interconnectivity and roaming provided by the other service providers to its subscribers and is entitled to receive for the services that it provides to the subscribers of the other operators.

T Ltd., like any other telecom operator, is following a practice of settling the account periodically by netting off the amounts receivable from against the amounts payable to various operators.

The Tax department took a view that the amounts payable under the aforesaid agreements are in the nature of Fees for technical services since provision of connectivity involves
sophisticated technology. It had thus raised a demand by passing an order under section 201 read with section 194J of the Act.

The company took up the matter in appeal and argued that the payments cannot be regarded as Fees for technical services merely because the provision of interconnectivity services involves technological inputs. The CIT (A) allowed the appeal of the appellant on that ground. However, the CIT (A), after giving a show cause to the company, held that the payment is in the nature of royalty since the connectivity involves one company allowing the other the use of its network. Alternatively, the CIT(A) has also held that the payment would fall under the scope of section 194C since the interconnectivity charges involves carrying out of work for connecting the subscriber of one operator to the subscriber of the other.

**V. Case Study on Section 194I v. 194J – Rent v. Royalty v. Contract payments (JG)**

The definition of ‘rent’ under the Explanation to section 194I includes payment under an arrangement for the use of, inter alia, “machinery, plant, equipment”.

Section 194J covers sums by way of “royalty” within the scope of that section. The term “royalty” as defined in the Explanation 2 to Section 9(1)(vi) includes consideration for “the use or right to use any industrial, commercial or scientific equipment…”

Thus, both these provisions seem to include consideration for use of plant, machinery or equipments. Questions have arisen as to which is the correct section under which the tax ought to be deducted in several cases. Some of the instances that the panelists may discuss are:
• Car hire charges/rent a car arrangements (also discuss whether section 194C is relevant here);
• Arrangement for providing a fully furnished flat on lease along with several household gadgets and separate charges are levied for the rent of the flat and for the gadgets.

VI. Case Study on Section 194C v. 194J—Satellite rights (AV)

The assessee is a public religious trust and as part of its activities has entered into an agreement for use of slot in the telecast by a reputed television channel for telecasting programme by payment of telecasting charges.

The agreement contemplates telecasting of a programme for thirty minutes per week for 52 weeks at a specific time for which a consideration of Rs. 30,000 per telecast is payable by the assessee as “telecast fee”.

Would the applicable TDS section be 194C or 194J?

VII. Case Study on Section 194J v. 194C—Advertisement in newspapers (JG)

One of our clients places advertisements in the local newspapers to promote the sale of his products. The advertisements are placed in the newspapers directly and the advertisement is designed by the client himself. The payment for the purchase of space is made directly to the newspapers by the client. In the light of s. 194J, please clarify whether the client is liable to deduct tax at source under s. 194J.
presuming that the payments are likely to exceed Rs. 20,000 during the financial year.

In case the advertisement is inserted through an advertisement agency, what are the consequences in respect of s. 194J.

**VIII. Case Study on Data Processing Job – Section 194C or 194J (JG)**

One of our clients is carrying data processing job on computer in one of the branches of UTI. There is an agreement between the said client and UTI for the above job. The client has no professional qualification except that he holds a diploma course in computer from some private training institute. In the earlier years, TDS at 2% was being deducted under s.194C from the total bill, but from April, 1999 onwards, TDS at 5% is being deducted under s.194J by UTI. Would you please clarify whether “data processing job” is covered under s. 194J or s.194C?

In the agreement, there is no mention of qualification required for doing the said job; all that is mentioned is that “UTI is hiring the services of outside agency to get the job of data entry and related work done”. Payment is made on the basis of number of entries made, with no minimum or maximum limits.

**IX Case Study on Section 194H (AV)**

A Ltd is engaged in the business of running a call centre. The company also runs a training centre for people wanting to join call centre. The company has appointed through written contracts various franchises to run training centres in various parts of the city. As per the terms of the contract, the franchises collect training fees and after retaining certain
amount towards recoupment of their cost and commission, remit balance the balance amount to A Ltd. Is TDS applicable in such case? If so, on what amount and at what rate? How will this be practical since A Ltd. is not directly making any payment to the franchisees?

**X Case Study on Section 194C Payment to Contractors (AV)**

Assessee engaged in imports and/or exports engage services of Clearing & Forwarding (C & F) agents. Payments to such C & F agents typically comprise of following :-

a. Reimbursement of freight paid to shipping companies or airlines.

b. Reimbursement of freight on local transportation.

c. Reimbursement of import or export clearing expenses like payments to Port Trust, Airport Authorities of India, miscellaneous charges, etc.

d. Reimbursement of bonded warehousing charges.

e. Reimbursement of Customs duties and Octroi.

f. Reimbursement for Crane and Machinery charges to Port Trust etc.

g. Agency service charges.

h. Service Tax

Whether any tax is liable to be deducted on any of the above payments to C & F agents?

Also if the agent has already deducted TDS on Freight payment to the Indian Shipping Company, then whether the importer/exporter also needs to deduct tax on payments made to Agents and if so on what amounts?
Also, when Clearing Agent deducts tax and pays it to the exchequer, the payment would be on his own TDS account number or his clients’ account number?

**XI Case Study on Section 194I- Rent (JG)**

In case of an assessee making payments to a company running a hotel chain in respect of rooms booked in hotels for its various employees at different locations, is the company required to deduct tax under section 194-I if the total payments to be made to that company exceeds Rs.1,20,000 during the financial year.

Would it make any difference if the payment exceeds Rs.1,20,000 in respect of rooms booked in one particular hotel?

In the above case, an employee of the company regularly goes to New Delhi every month and stays in the same hotel everytime. He pays the hotel charges by credit card and the company reimburses the expenses to him by cheque. If the total payments made by the employee during the year exceed Rs. 1,20,000 in the year, would the provisions of section 194I apply? If yes, how should the company ensure compliance?

**XII Case Study on Section 194C / 194I (JG)**

What is the rate of TDS applicable on payments to organizers of trade exhibitions and fairs who provide space and affiliated services like electricity, air conditioning, security etc for putting up stalls and exhibiting products? Whether tax is to be deducted under section 194C at 2% or under section 194I at 15% / 20%?
XIII Case Study on Section 194J (AV)

(a) What is the TDS liability of an assessee availing Portfolio Management Services (PMS) on the fees payable? The PMS consultants directly charge the fees by debiting the portfolio account. Hence there is no direct payment made by the assessee to the consultants. What are the other implications of non-deduction if the assessee is not claiming the fees paid to PMS consultants as deduction from income?

(b) In the above case, if there is failure to deduct tax at source and payee has filed return of income declaring the said receipt and paid taxes thereon. Can assessing officer issue notice u/s. 201(1A) to the payer for recovery of tax not deducted by him? If yes, is he liable to pay tax? If not, is he liable to pay interest? If yes, what is the period for which interest is payable?