
(2008) 03 P&H CK 0133
In the Punjab And Haryana At Chandigarh

Kurukshetra Darpan's (P) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Income Tax Act, 1961 — Section 194, 194C, 201, 260A

Citation : (2008) 217 CTR 326 : (2008) 169 TAXMAN 344

Hon'ble Judges : Satish Kumar Mittal, J; Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This judgment will dispose of IT Appeal Nos. 260, 261 and 262 of 2007 as the proposed substantial questions of law involved in all the appeals are similar. For the sake of arguments, the facts are being taken from IT Appeal No. 260 of 2007.

2. The present appeal has been filed by the Revenue u/s 260A of the IT Act, 1961 (for short "the Act") against the order dt. 28th Dec, 2006 passed in Appeal No. 801/Chd/2006 by the Tribunal, Chandigarh, for the asst. yr. 2006-07, raising the following substantial questions of law:

(i) Whether Section 194C of the IT Act, 1961 is applicable in the facts and circumstances of this case ?

(ii) Whether the Revenue is justified in treating the appellant/assessee an assessee in default without making any inquiry from the payee as to the fact whether the payee has discharged his liability to pay tax on the income received from the payer ?

(iii) Whether the appellant can be treated as assessee in default for non-deduction of tax at source on account of his bona fide belief that he is not liable to deduct tax at source and the payee has discharged his liability on the income so received from the payer ?

(iv) Whether interest can be charged u/s 201(1A) on account of an assessee's failure to deduct tax under a bona fide belief that it is not liable to deduct tax at source ?

3. The assessee is a cable network operator who is in the business of distributing cable connections to the customers and charges subscription fee from them. The appellant assessee enters into a contract with the licensor of various TV channels for local cable distribution system. It is relevant to mention here that these licensors are not the owners of the TV channels and they only have the exclusive right to market and distribute satellite based television service to various customers and users of the service. In the above mentioned contract, the assessee is referred to as subscriber or affiliate as he is to pay the subscription to another party referred to as the licensor. These channels are telecasted from abroad and the assessee becomes an affiliate or subscriber of the licensor by entering into an agreement for payment of subscription. This payment is based on the number of customers of the appellant or the amount of subscription collected.

4. During the course of inspection regarding proper implementation of TDS provisions on 2nd March, 2006, it was noticed by the ITO(TDS), Kurukshetra that the assessee has not deducted tax at source u/s 194C of the Act from the payments made to the different channels for airing charges for broadcasting of programme and for use of electric pole to make the programme to reach the viewer's door.

The assessee was served with a show-cause notice vide letter dt. 16th March, 2006 as to why he should not be treated as an assessee in default in terms of Section 201 and 201(1A) r/w Section 194C of the Act for making payment of "airing charges to different TV channels for broadcasting" of programmes and the Electricity Department for using their electric poles to enable connectivity to the viewers/customers, without deduction of tax at source in violation of the provisions of Section 194C of the Act. The assessee was further directed to bring copy of contracts, if any, reached with different channels or with Electricity Department.

5. In response to the said notice, the assessee filed reply and averred that the provisions of the Act are not applicable since the assessee was not carrying on any work for broadcasting and telecasting including production of programme for such broadcasting and telecasting of programme are being done by channels owners and they are paying airing charges to the satellite owners. It was further stated that the assessee is engaged in distribution of signals of different satellite TV channels and providing their programme to the customers for which assessee pays subscription charges to the distributors of channel owners who are authorized to distribute the channels. As regards payment of rent to Electricity Department for use of their poles, it was stated that it is not covered under the provisions of Section 194-I of the Act.

6. The ITO(TDS), Kurukshetra after considering the reply of the assessee found that the assessee is serving as cable operator/distributor and is airing programmes after executing the contract with various TV channels for which, he has paid subscription charges to the tune of Rs. 70,97,945 and Rs. 1,12,500 as pole rent to Electricity Department during the financial year 2005-06 and the assessee is covered under Sub-clause (b) of Expln. III to Section 194C of the Act. Accordingly, the assessee was held in default u/s 201 r/w Section 194C of the Act and created a demand u/s 201 along with penal interest thereon u/s 201(1A) of the Act vide order dt. 27th March, 2006. Similar orders were passed during the financial year 2003-04 and financial year 2004-05.

7. Feeling aggrieved against the order dt. 27th March, 2006 passed by the ITO (TDS), Kurukshetra, the assessee filed appeals before the CIT, Karnal. The said appeals were allowed vide order dt. 4th Sept., 2006 passed by the CIT(A), Karnal. While allowing the appeals, the CIT(A), Karnal held that the agreement and the case under consideration for payment of subscription to the licensor are not covered under any provisions of Section 194C of the Act. The contract for use of the electricity poles was also held not covered u/s 194C or u/s 194-I of the Act. Resultantly, the order u/s 201 r/w Section 201(1A) of the IT Act passed by the ITO(TDS), Kurukshetra was set aside and the demand created was deleted.

8. Aggrieved against the order of the CIT(A) dt. 4th Sept., 2006, the Revenue filed further appeal for all the three respective years before the Tribunal, Chandigarh Bench, Chandigarh. The Tribunal vide its judgment dt. 28th Dec, 2006 concluded that the AO was correct in holding that the assessee was required to deduct tax at source in terms of Section 194C of the Act on payments made to the licensor for obtaining TV signal for distribution through the cable network owned by the assessee and resultantly set aside the order of the CIT(A) to that extent. Insofar as the issue regarding tax deduction on payment of rent of electric poles is concerned, the Tribunal upheld the decision of the CIT(A) and found no justifiable reason for invoking Section 194C of the Act on such payments. Consequently, it partly allowed the appeals of the Revenue.

9. We have heard learned Counsel for the parties and perused the record.

10. Shri Sehgal, learned Counsel for the appellant has vehemently argued that the provisions of Section 194C of the Act are not applicable in the present case as the appellant has entered into a contract with the licensor or distributors of the TV channels and not with the TV channels. Moreover, the payments of subscription charges are being done to the licensor and not to the TV channels who are actually broadcasting or telecasting the programmes and therefore, the AO has proceeded with the issue on a wrong premises that the appellant is making payments to the different TV channels for airing charges for broadcasting of programmes. It has been further submitted by the learned Counsel that the assessee is working as an affiliate of the licensors who are authorized distributors of various TV channels through the distribution system in India. The work of broadcasting and telecasting including the production of programme for such

broadcasting is done by the TV channels from outside India. The assessee is only a subscriber to the programme which is already being broadcasted and telecasted by different TV channels. Thus, the assessee is not liable to make the payment. It has also been argued by the counsel for the appellant that the term "Broadcasting and Telecasting" has not been defined anywhere in the Act and the licensors cannot be held to be in the business of broadcasting and telecasting as per the meaning of the term "broadcasting and telecasting" as it is generally understood in common parlance.

11. On the other hand Shri Yogesh Putney, advocate, learned Counsel for the Revenue has supported the judgment of the Tribunal by relying upon the definition of work as given in Explan. III of the proviso to Section 194C(2) of the Act. Explanation III of the proviso to Section 194C(2) is reproduced below:

Explanation III.-For the purposes of this section, the expression "work" shall also include:

- (a) advertising;
- (b) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) Carriage of goods and passengers by any mode of transport other than by railways;
- (d) Catering.

12. After hearing learned Counsel for the parties, we are of the view that the contentions of the counsel for the appellant are liable to be rejected. Sec. 194C of the Act creates an obligation on a person responsible for paying any sum specified therein to a person for carrying out any work, to deduct the tax at source. Presently, we are concerned with the "work" as referred to in Clause (b) of Explan. III below Section 194C(2) of the Act.

13. In terms of the said Explanation, it is provided that expression "work" shall include, inter alia, broadcasting and telecasting including production of programmes for such broadcasting and telecasting. By way of such Explanation, it is evident that where the payment is for a work involving broadcasting and telecasting, the same shall be subject to deduction of tax at source in terms of Section 194 of the Act. The assessee is a cable network operator through which it provides telecasting of programmes to the ultimate consumers/subscribers. The assessee in turn enters into a contract with the licensor of various TV channels. On the payment so made, Section 194C of the Act is attracted. This is for the reason that the licensor, is a person who is performing the work which is covered within the meaning of Clause (b) of Explan. III to Section 194C(2) of the Act.

14. It is also relevant to mention here that in the agreement between the assessee and the licensor, the licensor is referred to as "company engaged in the

business of distribution of satellite based television channel(s) services including the service and has exclusive rights to market and distribute the services in India to various customers and users of the service". Further, the agreement refers to the assessee subscriber as a party, which is desirous to subscribe for and receive the telecast signals of the service from the company in order to further distribute the same to the customer(s).

15. From the recital of the agreement itself, it is clear that the service that the assessee subscriber is availing is the receipt of "telecasting signals" from the licensor or the company. The expression "service" has also been referred to mean the TV channel which is dealt with by the licensor or the company. Therefore, what the assessee has transacted for with the licensor or company certainly includes within its ambit broadcasting and telecasting facility. The essence of the contract is to obtain broadcasting and telecasting of TV channels and thereafter its distribution amongst ultimate customers through the cable network of the assessee.

16. Another plea of the assessee/subscriber was that the licensor or the person to whom the assessee is making payment by itself does not do the work of broadcasting and telecasting and is therefore outside the purview of Section 194C of the Act. This argument deserves to be negated at the threshold. As we have pointed out earlier what the assessee subscriber is looking for is to obtain the telecast signals from the licensor, which is enough to deduce that the impugned contract involves broadcasting and telecasting of TV signals. Moreover, the licensor or the company, as is evident from the specimen agreement on record, is in the business of distribution of satellite based TV channels and has exclusive rights to market and distribute said services in India, the service that is referred to in the agreement is the broadcasting and telecasting of TV signals.

17. For the reasons recorded above, we have no hesitation in concluding that the Tribunal was correct in holding that the assessee was required to deduct tax at source in terms of Section 194C of the Act on payments made to the licensor for obtaining TV signals, cable TV network owned by the assessee.

18. In view of the above, the substantial questions of law raised by the appellant are answered in the negative, i.e., against the assessee and in favour of the Revenue. Consequently, the appeals are dismissed.