

Notes on

Issues & Challenges in Application of provisions including recent decisions

CA Ravi J SONI

Section 192

Any person responsible for paying any income (including perquisite) chargeable under the head “Salaries” shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.

Where an assessee who receives any income chargeable under the head “Salaries” has, in addition, any income chargeable under any other head of income (not being a loss under any such head other than the loss under the head “Income from house property”) for the same financial year, he may send the details of the income to the person responsible for making the payment in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall take such other income and tax, if any, deducted thereon; and the loss, if any, under the head “Income from house property”, also into account for the purposes of making the deduction.

The person responsible for making the payment may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

Important Case Law

- Disbursement of meal coupons made by employer to its employees did not attract TDS under section 192 **ACIT Vs. Infosys BPO [2013] 37 taxmann.com 53 (Bangalore - Trib.) / CIT Vs. Reliance Industries Ltd [2008] 175 TAXMAN 367 (H.C. GUJ.)**
- Salary paid to foreign technicians for setting up a power plant in India is chargeable to tax in India and consequently provisions of section 192 were applicable. Irrespective of the fact that employees as well as employer were non-resident, fact that payment was made outside India and fact that contract of employment was also out of India, and what is relevant is place where services were rendered. **Babcock Power (Overseas Projects) Ltd. Vs. ACIT [2002] 81 ITD 29 (DELHI Trib.)**
- Amount of tax payable on salary income of employees, which was borne by employer, should be treated as part of 'salary' of employees for purpose of making estimate of income of employees under section 192 **British Airways . Vs.CIT [1991] 54 TAXMAN 470 (H.C. CAL.)**

- An employer, discharging his statutory obligation under section 192, is not only required to satisfy himself that payment made by him to his employees in respect of leave travel concession is not taxable, as envisaged under section 10(5) but also has to preserve evidence in relation thereto so as to demonstrate and establish to satisfaction of officer. **C.E.S.C. Ltd. Vs. ITO [2004] 134 TAXMAN 511 (H.C. CAL.)**
- The point of time at which tax is to be deducted from salary under section 192 is at time of payment and not when salary is accrued or credited to account of payee. **Citigroup Global Markets India (P.) Ltd. Vs. DCIT [2009] 29 SOT 326 (MUM. Trib)**
- Where home salary/special allowance payment made by foreign company abroad is for rendition of services in India and no work is found to have been performed for foreign company, such payment would certainly come under section 192(1), read with section 9(1)(ii) – **CIT Vs. Eli Lilly & Co. (India) (P.) Ltd. [2009] 178 TAXMAN 505 (SC)**
- While deducting TDS from employee's income, employer is not expected to step into shoes of Assessing Officer and determine actual income – **CIT Vs. Delhi Public School [2011] 15 taxmann.com 107 (H.C. Delhi)**
- When there is no record to show that amount paid by foreign company to its employees was made known to Indian company or said amount was also disbursed to employees of foreign company through Indian company, Indian company is not liable to deduct tax at source in respect of payments made by foreign company to its employees. **CIT Vs. Indo Nissin Foods Ltd. [2010] 194 TAXMAN 144 (H. C. KAR.)**
- Object of section 91(1) is to give relief from taxation in India to extent taxes have been paid abroad for relevant previous year and this relief is not dependent upon payment also being made in previous year. **CIT Vs. Petroleum India International [2013] 29 taxmann.com 250 (H. C. Bombay)**
- The obligation to deduct tax at time of payment, which is mandate of sub-section (1) of section 192, extends up to end of financial year by virtue of provisions contained in sub-section (3) of section 192 . Therefore, where assessee did not deduct tax under section 192(1) from salaries in each month, rather it deducted tax at end of financial year, there would be no interest u/s 201(1A) by relying on section 192(3). **CIT Vs. Enron Expat Services Inc [2010] 194 TAXMAN 70 (H. C. UTTARAKHAND)**

- Difference in sale price of items and written down value of items in books of account of assessee can not be considered as perquisite in hands of its employees, it is necessary to considered fair market price prevailing at that time. **CIT Vs. Max India Ltd[2007] 163 TAXMAN 225 (H.C. DELHI)**
- Where assessee-hospital under an agreement was availing services of doctors who fixed their own OPD hours etc. and there was no control of hospital by way of direction to doctors on treatment of patients, it could be said that there was no employer and employee relationship between hospital and professional doctors and, therefore, tax was to be deducted under section 194J and not under section 192. **DCIT Vs. Ivy Health Life Sciences (P.) Ltd. [2013] 31 taxmann.com 236 (Chandigarh - Trib.)**
- Where assessee-hospital engaged some doctors on fixed monthly remuneration, and doctors were governed by its service rules, remuneration paid was taxable as 'salaries' and liable for deduction of tax under section 192 **DCIT Vs. Wockhardt Hospitals Ltd [2012] 24 taxmann.com 190 (Hyd. Trib)**
- Assessee paid to its employee every month certain amount in advance towards leave travel concession & medical reimbursement without deducting TDS, however Assessee as employer deducted tax at source under section 192 accordingly at end of financial year – if not supported by bills or whenever bills were not submitted. **ITO Vs. Goodrich Aerospace Services (P.) Ltd. [2013] 38 taxmann.com 37 (Bangalore - Trib.)**
- Tips paid by customers to employees working in a restaurant can not be considered as part of their salary liable for deduction of tax at source **Nehru Place Hotels Ltd Vs. ITO[2008] 173 TAXMAN 88 (DELHI Trib)(MAG.)**
- Respondent had any grievance about deductions of tax, proper remedy for respondent was to approach concerned income-tax authority/officer and not to file complaint. **Rajeshwar Tiwari Vs. Nanda Kishore Roy [2011] 11 taxmann.com 407 (SC)**
- Life Insurance Corporation (LIC), the employer of the Development Officer cannot be held to be assessee in default for not deducting tax at source from conveyance and additional conveyance paid to its officer, as the same was permissible deduction under section 10(14) of the Act. **Senior Branch Manager, UC of India v. CTT & Anr. (2012) 72 DTR 152 (ALL) (HIGH COURT)**
- Where salaries had been paid to non-residents for services rendered abroad, provisions of Explanation to section 9(i)(ii) were not applicable to assessee. Since salary paid to non-

residents for services rendered in Netherlands was not chargeable to tax in India, provisions of section 192 cannot be applied hence disallowance made by applying the provisions of section 40(a)(iii) were liable to be deleted. (A. Y. 2003 - 04). **CIT v. Mother Dairy Fruits & Veg (P) Ltd. (2011) 45 SOT 186 / 141 TTK 97 / 60 DTR 220 (Delhi)(Trib.)**

Section 193 - Interest on securities.

The person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit / Payment, whichever is earlier, deduct income-tax at the rates in force on the amount of the interest payable. Transfer to any account like suspense account other than the party account will be considered as if such interest amount has been credited in the books of account.

Important Case Law

When assessee could not have ascertained identity of payees at point of time when provision for „interest accrued but not due" was made, assessee did not have any liability to deduct tax at source in respect of provision for „interest accrued but not due" in respect of regular return bonds. And when there was no obligation upon assessee to deduct tax at source, there could not be any question of levy of penalty and interest under section 201 upon assessee. **Industrial Development Bank of India Vs. ITO [2007] 107 ITD 45 (Mum.) (Trib.).**

Section 194A - Interest other than "Interest on securities"

Any person who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit or payment by any mode, whichever is earlier, deduct income-tax thereon at the rates in force. Transfer to any account like Interest Payable Account or Suspense Account or by any other name, in the books of account of the person liable to pay such income will be considered as if such interest amount has been credited in the books of account. The person responsible for making the payment may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

However in following cases income tax need not be deducted

- To such income credited or paid to any banking company, Insurance company , co-operative society carrying on the business of Banking / insurance, corporation established by or under a Government Act (LIC, UTI)
- To such income credited or paid by a firm to a partner of the firm
- To such income credited or paid by a co-operative society to a member thereof or to any other co-operative society;
- To such income credited or paid in respect of deposits under any scheme framed by the Central Government
- To such income credited or paid in respect of deposits other than time deposits with a banking company
- To such income credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank or with a co-operative society other than a co-operative society bank
- To such income credited or paid by the Central Government under various Act
- To such income credited or paid by way of interest on the compensation not exceeding Rs 50000/- amount awarded by the Motor Accidents Claims Tribunal
- To such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond

Important Case Law

- Assessee is liable to deduct tax at source on interest payments, even if it has not claimed same as deduction while computing its total income. **Agreenco Fibre Foam (P.) Ltd Vs. ITO [2013] 38 taxmann.com 155 (Cochin - Trib.)**
- Any income / interest paid to societies which are wholly funded by Government would qualify for non-deduction of tax. **ITO Vs. State Bank of Patiala [2013] 35 taxmann.com 466 (Chandigarh - Trib.)**
- Where a trust, managing village Self Help Groups, took loans, lent money to such groups and paid interest after collectings same from these groups, being a representative assessee of such groups, will have no TDS liability. **ITO Vs. Sarvodaya Mutual Benefit Trust [2013] 31 taxmann.com 418 (Chennai - Trib.)**

- Co-operative societies are exempt from provisions of section 194A. **Kadachira Service Co-op. Bank Ltd Vs. ITO [2013] 30 taxmann.com 32 (Cochin - Trib.)**
- Insofar as societies are concerned, only those registered under Societies Registration Act, 1860 are exempted from deduction of tax at source under section 194A on interest income received by them. **Kerala State Nirmiti Kendra Vs. CIT [2013] 30 taxmann.com 15 (H.C. Kerala)**
- Filing of Form No. 15G/15H - Unless Form No. 15G/15H is collected from depositors, interest paid to them without deducting tax at source was to be disallowed. **ACIT Vs. Meerut Rubber Factory [2012] 25 taxmann.com 338 (Delhi- Trib.)**
- A payment which has direct link and immediate nexus with trading liability will not fall within category of interest; while paying interest on delayed payment of purchase bills, no TDS obligation arises. **Sri Venkatesh Paper Agencies (Hyd.) (P.) Ltd Vs. DCIT [2012] 24 taxmann.com 52 (Hyd. Trib)**
- Reimbursement of interest by subsidiary to parent company which, in turn, had repaid it to lender bank, did not involve any element of income and, thus, no TDS liability would arise under section 194A on reimbursement. **Onward e-Services Ltd. Vs. ACIT [2012] 22 taxmann.com 60 (Mum. Trib.)**
- Amount paid by X Company to Y company for reimbursement of bank interest paid by Y company would clearly come within definition of 'interest' under section 2(28A) and assessee was liable to deduct TDS from said amount in terms of section 194A - **Bhura Exports Ltd. Vs. ITO [2011] 13 taxmann.com 162 (Cal. Trib.)**
- Interest received as a payment for delayed receipt of compensation on land acquisition is a revenue receipt liable to TDS under section 194A. **Rameshwar Vs. Ujjain Development Authority [2012] 23 taxmann.com 6 (H.C. MP)**
- Where Rajasthan Rural Road Development agency (RRRDA) kept funds released by Ministry of Rural Development in a separate account opened with assessee-bank to be utilized for purpose of approved work under Pradhan Mantri Gram Sadak Yojna (PMGSY), interest paid by assessee to RRRDA would not be liable to tax deduction at source under section 194A. **ITO Vs. Branch Manager, State Bank of Bikaner & Jaipur [2012] 19 taxmann.com 221 (JP. Trib.)**

- Credit of tax based on TDS certificates be allowed in respect of interest income in the year in which subject-matter of deduction of tax is assessed. **CIT Vs. H. Krishna Vijoy Arora [2012] 20 taxmann.com 655 (H.C. Ker.)**
- Assessee has no obligation to deduct tax at source (u/s 194A) on interest paid under decree of Court. **Akber Abdul Ali Vs. ACIT [2013] 30 taxmann.com 118 (Mumbai - Trib.)**
- Tax was to be deducted at source under section 194A where due to losses no interest was paid by assessee to its creditor but credit entry was made as if interest was paid to creditors. **Solar Automobiles India (P.) Ltd. Vs. DCIT [2012] 17 taxmann.com 260 (H.C. Kar.)**
- Company's directors took loans in their individual capacities from creditors in name of Company - When directors repaid loan amount or interest thereon, such payments were also routed through Company - Directors issued cheques in favour of Company and Company in turn issued cheques to creditors/lenders of such directors - TDS need to be deducted by Company on interest payments as required u/s 194A. When there is no resolution of Company whereby it had agreed to act as a medium for routing borrowings and repayments, it could not be said that Company is in charge of disbursing repayments made by directors in their individual capacities. **CIT Vs. Century Building Industries (P.) Ltd. [2007] 163 TAXMAN 188 (SC).**
- Payment made by company, engaged in retail finance services, corporate advisory services, securities trading and assets securitisation, to persons who had invested in a scheme floated by it under which investor was guaranteed a minimum return of 1.5 per cent per month, was „interest" within meaning of section 2(28A) and so tax under section 194A is need to be deducted at source. **Viswapriya Financial Services & Securities Ltd. Vs. CIT [2003] 127 TAXMAN 385 (H.C. MAD.)**
- Cheque discounting charges are different from interest payments. **ITO Vs. A.S. Babu Sah [2003] 86 ITD 283 (MAD. Trib.)**
- Person responsible for paying interest has to deduct tax at source on gross amount of interest and not on net amount of interest arrived at by principles of mutual set off between parties. **CIT Vs. S.K. Sundararamier & Sons [1999] 240 ITR 740 (H.C. MAD.)**
- Interest paid by partner to firm, tax is deductible at source on such interest. **Thomas Muthoot v. Dy. CIT [2013] 21 ITR133 / 55 SOT 390 (Cochin.)(Trib.)**

Section 194BB- Winnings from horse race

Any person, being a bookmaker or a person to whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course, who is responsible for paying to any person any income by way of winnings from any horse race in an amount exceeding five thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.

Important Case Law

- Deduction of floor limit is to be allowed from each winning from horse race. **DELHI RACE CLUB (1940) LTD. Vs. DCIT [2007] 17 SOT 39 (Delhi) (Trib.)(URO)**
- Tax is required to be deducted only from net income arising out of horse race to punter from any particular race after deducting investment made by him in purchasing all tickets relating to such horse race. **Royal Calcutta Turf Club Vs. DCIT [2001] 76 ITD 237 (CAL.) (Trib.).**

Section 194B - Winnings from lottery or crossword puzzle.

The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force. In a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Important Case Law

- Where assessee had conducted sales promotion schemes and distributed prizes to customers wholly in kind of an amount of Rs. 60 lakhs, it was not obliged to deduct tax at source under section 194B in respect of prizes paid in kind. **CIT Vs. Hindustan Lever Ltd. [2013] 39 taxmann.com 152 (Karnataka) (H.C.)**

- A person, who conducts any scheme in name of lottery or drawing by lot by giving a person a chance to win by participating in scheme, is responsible to deduct tax at source on value of goods given to winner. Assessee conducted a lottery scheme in which assessee sold coupons to participants and that no personal knowledge or skill of participant was required to participate in scheme in which winner of lucky draw was to be given a Tata Sumo vehicle - Assessee, as per provisions of section 194B, was responsible for deduction of tax at source on value of Tata Sumo given to lucky draw winner. **Hind Motors India Ltd Vs. ITO [2006] 9 SOT 556 (CHD). (Trib.)**
- The petitioners were conducting kuries. They in order to ensure prompt payment of kuries, introduced a scheme. Under the said scheme, they were giving prizes by taking lots among their subscribers who were promptly remitting kuri instalments, without taking any independent consideration from them in respect of the gifts given to the winners. Unless there was independent material to show that a separate consideration other than instalment payments was provided in scheme, there was no question of treating kuries conducted by petitioners as lotteries to attract provisions of section 194B. The essential elements that go to constitute a lottery are : (1) a prize or some advantage in the nature of a prize, (2) distribution thereof by chance, and (3) consideration paid or promises for purchasing the chance. Thus, unless all the three elements are satisfied, the prize scheme cannot be considered as a lottery. The chance of a person getting the prize cannot be treated as part of the bargain unless independent consideration is there with respect to the prize awarded. **Canaan Kuries & Loans (P.) Ltd. Vs. ITO [2005] 142 TAXMAN 249 (Ker). (H.C.)**
- Whether where in „World Cup Football Forecast“ or „Lok Sabha Election Forecast“ contests were held by company and no price was paid for participation, but only skill or knowledge was criterion and prize winners were selected by lot, said contests did not amount to lottery and, therefore, assessee was not liable to deduct tax at source before distribution of prize money of said contests as contemplated under section 194B. **ITO Vs. Malayala Manorama Co. Ltd [2005] 94 ITD 195 (Cochin.) (Trib.)**
- Refund by Directorate of State Lotteries to organising agent of prize money from unsold tickets of lotteries and unclaimed prizes would not attract provisions of section 194B. **ACIT Vs. Director of State Lotteries [2002] 123 TAXMAN 405 (Gau.) (H.C.)**
- Whether section 194B imposes an obligation to deduct tax at source at time of payment and not at time of credit. **ACIT Vs. Director of State Lotteries [2000] 108 TAXMAN 88 (Gau.) (H.C.)**

- Assessee was carrying as a prized scheme, in which 250 members were enrolled - Members were required to subscribe Rs. 300 every month for a period of 52 months - Every month there was a lucky draw and once a subscriber was declared a winner in any such draw, he need not make any payment thereafter - All others, who were not successful in previous draw had to go on paying every month till completion of Scheme - After completion of scheme all subscribers who were not successful in monthly draws would get back their contributions without interest - Such scheme in question could be treated as 'lottery' scheme and assessee was liable to deduct tax at source under section 194B. **Lakshmi Ganeswara Enterprises & Financiers Vs. ITO [2000] 72 ITD 295 (Hyd.) (Trib.).**

Section 194D - Insurance commission

Any person responsible for paying to a resident any income twenty thousand in a financial year by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Important Case Law

Section 194D does not apply to each and every payment made by any person by way of commission or otherwise; but it applies to remuneration or reward paid for soliciting or procuring insurance business. Since commission paid by assessee to insurance companies in case of reinsurance is in nature of compensation towards cost of procurement incurred by insurance companies for originally accepting insurance business from agents, provisions of section 194D would not be attracted. However, section 194D would be attracted in case of insurance company for paying commission to agents for procuring insurance business for them. **General Insurance Corpn. of India Vs. ACIT [2009] 28 SOT 453 (Mum.) (Trib.)**

Section 194E– Payments to non-resident sportsmen or sports associations.

Where any income referred to in [section 115BBA](#) is payable to a non- resident sportsman including an athlete or an entertainer who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of

credit or payment thereof in any mode, whichever is earlier, deduct income-tax thereon at the rate of.

Important Case Law

- Before invoking provisions of sections 201 and 194E in respect of payments made to non-resident concerns, it is necessary to examine whether any income can be considered to have accrued or arisen or is deemed to accrue or arise to non-resident concern in India. One should deduct the tax only on that portion of income which is accrued or arisen or is deemed to accrue or arise to non-resident concern in India . **PILCOM Vs. CIT [2011] 198 TAXMAN 555 (Cal.) (H.C.)**
- Payments made to umpires or match referees do not come within purview of section 115BBA because umpires and match referee are neither sportsmen (including an athlete) nor are they non-resident sports association or institution so as to attract provisions contained in section 115BBA and, therefore, liability to deduct tax at source under section 194E does not arise. **INDCOM Vs. CIT [2011] 11 taxmann.com 109 (Cal.) (H.C.)**

Section 194G - Commission, etc., on the sale of lottery tickets.

Any person who is responsible for paying, to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize by whatever name called on such tickets in an amount exceeding one thousand rupees shall, at the time of credit or payment thereof in any mode, whichever is earlier, deduct income-tax thereon at the rate of.

Important Case Law

- Since tickets were given to agents on a discount and there was no payment of commission to agent at time of purchase of ticket, section became automatically inapplicable. **M.S. Hameed Vs. Director of State Lotteries. [2001] 114 TAXMAN 394 (Ker.) (H.C.)**

Section 194H - Commission or brokerage

Any person responsible for paying to a resident any income exceeding five thousand in a financial year by way of commission or brokerage shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Important Case Law

- Payments made to banks on account of utilization of credit card facilities would be in nature of bank charges and not in nature of commission within meaning of section 194H and, hence, no TDS is required to be deducted under section 194H. **ACIT Vs. Jet Airways (India) Ltd. [2013] 40 taxmann.com 178 (Mumbai - Trib.)**
- Bank guarantee commission is not liable to TDS under section 194H. **Kotak Securities Ltd. Vs. DCIT [2012] 18 taxmann.com 48 (Mum. Trib)**
- Discount paid to distributor by cellular operator for selling mobile recharge coupons constitutes commission payment liable for TDS. **Bharati Airtel Ltd. Vs. DCIT [2013] 40 taxmann.com 46 (Cochin - Trib.)**
- Discount given to retail customers, group passengers and small time agents for purchase of tickets by an IATA agent is not liable to TDS under section 194H. **ACIT Vs. Al Hind Tours & Travels (P.) Ltd. [2013] 29 taxmann.com 294 (Cochin - Trib.)**
- No TDS obligation on trade discount given by a manufacturer and seller, to retailer under sales promotion scheme. **Gujarat Tea Processors & Packers Ltd. Vs. DCIT [2012] 28 taxmann.com 187 (H.C. Guj.)**
- Trade discount given by newspaper agencies to advertising agencies working for advertisers, is not in nature of 'commission' as per provisions of Explanation (i) to section 194H invoking TDS obligation of newspaper. **Jagran Prakashan Ltd. Vs. DCIT [2012] 21 taxmann.com 489 (H.C. All.)**
- TDS liability under section 194H would not arise on sale of stamp paper on discount by Treasury Office to licenced stamp vendors. **Chief Treasury Officer Vs. Union of India [2013] 37 taxmann.com 391 (H.C. Allahabad)**

- Payment made by distributor of SIM cards, to dealers in relation to sale of SIM cards, is in nature of commission as per section 194H. **ITO Vs. Smart Distributors. [2013] 40 taxmann.com 129 (Chandigarh - Trib.)**
- Providing services is essentially requirement of nature of transaction of commission. Consignee agents were paid expenditure incurred by them on basis of fixed cost rate as per agreement executed between them, TDS under section 194H was not required to be made as consignee agents did not give any service in respect of payment of reimbursement. **Pee Cee Cosma Sope Ltd. Vs. JCIT [2013] 35 taxmann.com 487 (Agra - Trib.)**
- In order to attract provisions of section 194H, income has to be received by way of commission or brokerage, however, it is not necessary that relationship between payer and payee has to be of principle and agent. **SKOL Breweries Ltd. Vs. ACIT [2013] 29 taxmann.com 111 (Mumbai - Trib.)**
- Sub-brokerage paid in connection with services rendered in course of buying and selling of units of mutual funds is not covered by provisions of section 194H. **DCIT Vs. S.J. Investment Agencies (P.) Ltd. [2013] 32 taxmann.com 97 (Mumbai - Trib.)**
- Assessee-company, engaged in business of publishing newspapers and satellite television broadcasting, was not liable to deduct tax at source on agent's commission for sale of advertisement space in newspaper and time slots for television broadcasting. **ACIT Vs. [2013] 33 taxmann.com 381 (Hyderabad - Trib.)**
- Commission paid by Mother Dairy to concessionaires who sell milk of assessee from booths owned by assessee not liable to TDS under section 194H. As concessionaires were selling milk and other products in their own right as owners. **CIT Vs. Mother Dairy India Ltd. [2012] 18 taxmann.com 49 (H.C. Delhi)**
- Where assessee laboratory was rendering services of testing samples to collection centres/franchisees, TDS under section 194H not required in respect of discount offered by assessee to said collection centres/franchisees. It was noted that collection centre acted as an authorized collector for collecting samples and availed professional services of assessee with respect to testing of samples and issue of necessary reports. **SRL Ranbaxy Ltd. Vs. ACIT [2011] 16 taxmann.com 343 (Delhi Trib.)**

- No TDS under section 194H required on payment of brokerage paid to an agency for facilitating derivatives trade. **DCIT Vs. Noble Enclave & Towers (P.) Ltd. [2012] 18 taxmann.com 288 (Kol. Trib)**
- Where assessee had appointed a company as a consolidator to acquire and consolidate land holding on its behalf but agreement between them showed that consolidator was transacting on a principal to principal basis, it could not be said that payment was made by assessee to said consolidator for rendering of any service and, consequently, section 194H was not applicable. **ITO Vs. Finian Estates Developers (P.) Ltd. [2012] 23 taxmann.com 360 (Delhi - Trib.)**
- Assessee had parted with some part of commission received from builder for alluring purchaser so that it could earn more commission and same was just providing a discount to purchaser and not paying any commission for any services taken from such customers, thus, provisions of section 194H were not attracted. **DCIT Vs. Surendra Buildtech (P.) Ltd. [2011] 12 taxmann.com 178 (Delhi - Trib)**
- Since agreement between assessee and distributor was clearly stipulated to be an agreement on principal-to-principal basis, payments made by assessee to distributor were as incentives and discounts and not commission liable for deduction of tax at source under section 194H. **CIT Vs. Jai Drinks (P.) Ltd. [2011] 198 TAXMAN 271 (H.C. Delhi)**
- Assessee was a partnership firm engaged in sale of kurta, churidar, etc. - It had a sales counter in departmental store, namely, ADS - Every fifteen days, ADS submitted details of collection made and on basis of those details, assessee prepared a bill on ADS and ADS retained discount at rate of 20 per cent on cash sales and 22 per cent on credit card sales and remitted balance to assessee. On facts, it could be concluded that there was no sale of goods by assessee to ADS and, thus, there could be no question of giving discount on sales, so section 194H would be applicable. **Mahesh Enterprises Vs. ITO [2010] 42 SOT 125 (MUM.- Trib)**
- Assessee paid commission at rate of 15 per cent on advertisement charges remitted by advertising agencies - commission paid by assessee would be subject to tax deduction at source under section 194H - **CIT Vs. Director, Prasarbharti, Doordarshan Kendra [2010] 189 TAXMAN 315 (H.C. KER.)**
- Where advertising agencies were not working under control of assessee and, therefore, transactions between assessee and accredited advertising agencies were on principal-to-

principal basis and not on a principal to agent basis - therefore, payment made by assessee to accredited advertising agencies could not be termed as payment of commission and, provisions of section 194H were not applicable to instant case . **ABP (P.) Ltd. Vs. ACIT [2008] 23 SOT 28 (KOL.- Trib)**

- Assessee had not paid any commission within meaning of section 194H to advertising agents rather had received amount from such advertising agents, on sale of said rights, there was no occasion for assessee to deduct tax at source as no payment was made by assessee to such advertising agents . **ITO Vs. Moving Picture Co. (India) Ltd. [2008] 20 SOT 120 (DELHI - Trib)**
- Credit card companies – Commission retained by credit card companies out of amounts paid to merchant establishment is not liable for deduction of tax at source. **DCIT v. Vah Magnan Retail (P) Ltd. (2012) BCAJ – July P. 56 (Mum.) (Trib.)**

Section 194I - Rent

Any person responsible for paying to a resident any income exceeding one lakh eighty thousand in a financial year by way of rent shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Important Case Law

- Where assessee entered into an agreement with a contractor for hiring of vehicles and made use of vehicles and equipment and paid hire charges on basis of number of hours of use, section 194-I, and not section 194C, would be attracted. **Three Star Granites (P.) Ltd. V/s Assistant Commissioner of Income-tax, Circle -1(1) [2014] 41 taxmann.com 91 (Ker.) (Trib.)**
- PSF passenger service fee paid by assessee, airport operator to airport authority on behalf of its customers did not attract provisions of section 194-I. **ACIT V/s. Jet Airways (India) Ltd [2013] 40 taxmann.com 178 (Mum.) (Trib.)**
- Wharf charge is payment for using land together with structure on shore of navigation water and, thus, would be treated as rent under section 194-I. **DCIT V/s. Rajkot Gujarat Pipavav Port Ltd. [2013] 40 taxmann.com 174 (Rajkot) (Trib.)**

- Lease premium paid by assessee to CIDCO for acquiring leasehold land for a period of 60 years in order to develop a Special Economic Zone (SEZ) amounted to capital expenditure which did not fall within meaning of 'rent' under section 194-I and, therefore, assessee was not liable to deduct tax at source while making said payment. **ITO V/s. Navi Mumbai SEZ (P.) Ltd. [2013] 38 taxmann.com 218 (Mum.) (Trib.)**
- Where assessee-school awarded contract to transporter for carrying students to/from school and agreement showed that bus remained in possession of transporter and all costs for running and maintenance had to be incurred by transporter, such transport contract would be covered under section 194C and not section 194-I. **ACIT (TDS) V/s. Delhi Public School [2013] 37 taxmann.com 211 (Delhi) (Trib.)**
- Where cranes were provided by parties along with driver/operator and all expenses were borne by owners only, provisions of section 194C were only applicable for such payment and not provisions of section 194-I. **ACIT V/s. Bharat Forge Ltd. [2013] 36 taxmann.com 574 (Pune) (Trib.)**
- Tax is deductible under section 194C in relation to warehousing charges paid to clearing and forwarding agents. **COIT V/s. Hindustan Lever Ltd. [2013] 29 taxmann.com 313 (Delhi) (Trib.)**
- In absence of existence of landlord-tenant relationship, liability for deduction of TDS under section 194-I could not be crystallized upon assessee. **ACIT (TDS), Circle – Gurgaon V/s. Serco BPO (P.) Ltd. [2013] 32 taxmann.com 223 (Delhi) (Trib.)**
- Revenue cannot tax an item which is neither expenditure for assessee nor income for recipient. **ITO V/s. Hotel Parag Ltd. xmann.com 90 (Bang.) (Trib.)**
- Payment of landing and parking charges by an Airline to Airport Authority is payment to contractors and not payment of rent; TDS obligation is u/s 194C. **COIT V/s. Singapore Airlines Ltd. [2012] 24 taxmann.com 200 (Mad.) (Trib.)**
- Where holding company of assessee took a premises on rent and allowed assessee to use a part of it, and there was no relationship of lessor and lessee between them, assessee had no TDS obligation under section 194-I while reimbursing a part of rent to holding company. **ACIT V/s. Result Services (P.) Ltd. [2012] 23 taxmann.com 93 (Delhi) (Trib.)**
- Seconding entitlement rights of assured supply of railway rakes and receiving charges for same is not rent as defined in section 194-I and, therefore, there would be no TDS

obligation. **DCIT V/s. Bonai Industrial Co. Ltd. [2012] 24 taxmann.com 158 (Cuttack) (Trib.)**

- Upfront charges (Non Refundable deposit) paid for taking a land on lease would come within definition of 'rent' as per Explanation to section 194-I. **ITO V/s. Foxconn India Developer (P.) Ltd. [2012] 24 taxmann.com 48 (Chennai) (Trib.)**
- Hiring of equipment/vehicles simplicitor without requiring contractee to carry out any other work would be governed by section 194-I and not section 194C. **ACIT V/s. Three Star Granites (P.) Ltd. [2012] 20 taxmann.com 76 (Coch.) (Trib.)**
- Where lender neither had any work obligation nor any command, control and possession of machines after they were temporarily handed over to assessee on hire basis, it would not amount to a contract for carrying out any work as contemplated in section 194C. **ACIT V/s. Jaiprakash Enterprises Ltd [2011] 16 taxmann.com 276 (Luck.) (Trib.)**
- Payment made to owner of measurement machine for measuring uneven tanned leather would attract section 194-I and not section 194C - Scope of section 194-I was widened vide an amendment whereby definition of „rent“ was made wider so as to include rent from machinery. **ITO V/s. V.M.B. Leathers [2011] 44 SOT 19 (C hennai) (URO)**
- Where Agreement between parties was a franchisee agreement and not a lease agreement and it could not be said that rent was being paid by assessee to franchisees. **COIT V/s. NIIT Ltd. [2009] 184 TAXMAN 472 (Delhi) (Trib.)**
- Licence fee was paid by licensee to licensor for utilizing all production facilities provided at licensor"s premises, including use of all facilities, utilities, machines, factory, office premises, tools, equipments and residential quarters with freedom to sub-let or under-let whole or part of premises to any other company would fall within definition of „rent“. **TRC V/s. J.C. Bansal, Chief Engineer [2010] 123 ITD 245 (Indore) (Trib.)**
- Provisions of section 194-I are not attracted in sharing of proceedings of film exhibitions between film distributor and film exhibitor owning cinema theatre. **ITO Shringar Cinemas (P.) Ltd [2008] 20 SOT 480 (Mum.) (Trib.)**
- Assessee took on rent some premises at different places and in each case there were two landlords - Rental income from those properties was never assessed in hands of AOP - In the instant case, both the co-owners had duly declared their income individually and

the same had been accepted by the department. From these facts, it was clearly oozing out that their shares were definite and ascertainable. It also has been found as that the rent was not paid to conglomeration and thereafter it was distributed among the co-owners. **COIT V/s. M.M. KUMAR AND AJAY KUMAR MITTAL, JJ. [2007] 164 TAXMAN 510 (PUNJ. & HAR.) (H.C.)**

- Assessee had taken and acquired only right of displaying advertisement at hoarding site belonging to others, therefore, amount in question was paid by assessee for commercial exploitation of display rights and not for using hoarding sites under any lease, sub-lease, tenancy, etc. so, provisions of section 194-I were not applicable to instant case. **ITO V/s. Roshan Publicity (P.) Ltd [2005] 4 SOT 105 (Mum.) (Trib.)**
- Where agreement is not predominantly for use of land or building, but for something else, then payment under that agreement will not constitute rent even if that „something else“ involves use of land or building as an integral part of or incidental to predominant objective of agreement . **DCIT V/s. National Panasonic India (P.) Ltd. [2005] 3 SOT 16 (DELHI) (Trib.)**
- Where agreement is only for use of land and warehouse and no services of any type are provided by warehouse-keeper, amount paid by assessee to warehouse ought to be considered as rent and not as warehousing service charges and TDS was to be deducted therefrom as per section 194-I. **COIT V/s. Hindustan Coca-Cola Bev. (P.) Ltd. [2004] 141 TAXMAN 60 (Delhi) (H.C.)**
- At hotel, petitioner provided to its customers various types of furnished rooms with certain other facilities for a consideration which was normally known as „room charges“ squarely fell within meaning of term „rent“ as defined under Explanation to section 194-I . **Krishna Oberoi V/s. Union of India [2002] 123 TAXMAN 709 (AP) (H.C.)**
- Liability to deduct tax at source arises only when it pays rent or debits whichever is earlier and not on the basis of enhanced rent demanded by the landlord. **ITO v. Hotel Parag Ltd. (2012) Income Tax Review – Sept P. 90(Mum.)(Trib.).**

Section 194J – Fees For professional and Technical services

Any person responsible for paying to a resident any income exceeding thirty thousand in a financial year by way of fees for professional services, or technical services or royalty, or any sum referred to in clause (va) of [section 28](#), or any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under [section 192](#), to a

director of a company shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Important Case Law

- Where assessee acquired satellite television rights of some films for a period of 99 years under irrevocable deed of transfer with a liberty to telecast said film without any liability and even with a further right to assign in favour of third party copyright to broadcast said firm, it was a case of sale of satellite television rights and, thus, payment made for same would not fall within definition of 'royalty' as per Explanation 2 to clause (vi) of section 9(1). **DCIT V/s. Mrs. K. Bhagyalakshmi [2013] 40 taxmann.com 350 (Madras) (H.C.)**
- IT : Payment by share transfer agent to Depositories for availing access to database for downloading data electronically, is liable to TDS under section 194J. **ACIT V/s Karvy Computer- Share (P.) Ltd. [2013] 40 taxmann.com 312 (Hyderabad) (Trib.)**
- IT: Section 194J would have application only when technology or technical knowledge of person is made available to other; and not where mere technical systems and/or services are rendered. **ITO V/s. Hindustan Zinc Ltd. [2013] 40 taxmann.com 42 (Jodhpur) (Trib.)**
- Where income pertained to current year, income was to be booked and tax was to be deducted in current year only, even though assessee-recipient raised bill and received payment in subsequent year. **ACIT V/s. Marubeni Corporation [2013] 37 taxmann.com 318 (Mum.) (Trib.)**
- Where assessee obtained different oilfield services for exploration or extraction of mineral oil and natural gas on contract basis, such services could not be termed as technical services and provision of section 194J were not applicable. **DCIT V/s. Oil India Ltd. [2013] 37 taxmann.com 432 (Jodhpur) (Trib.)**
- Where low income group patients were provided aid by State Government under a scheme bill were raised in name of patients and payment were made by State Government on behalf of such patients, section 194J was not attracted. **ITO V/s. Chief Medical Officer [2013] 40 taxmann.com 156 (Indore) (Trib.)**
- When assessee and revenue, both had proceeded for almost a decade on footing that section 194J was not attracted on certain payments, assessee-payers could not be made

liable to disallowance under section 40(a)(ia) in its respect, for first time (for first year) when said payments were found liable for TDS. **DCIT V/s. Jamnadas Khusaldas & Co. [2013] 36 taxmann.com 284 (Mum.) (Trib.)**

- Where assessee made payment for sponsorship of various sports events, whereby it was entitled to advertise at venue and in brochure etc., it was purely for advertisement and not in nature of royalty. **ACIT V/s. Hero MotoCorp Ltd [2013] 36 taxmann.com 103 (Delhi) (Trib.)**
- Assessee is not required to deduct tax at source under section 194J in respect of lease line charges and VSAT charges paid to stock exchange. **ACIT V/s. Twenty First Century Shares & Securities Ltd [2013] 39 taxmann.com 176 (Mumbai) (Trib.)**
- TDS provisions are applicable on payment made to hospital by Third Party Administrator TPA in respect of health insurance claim. **Health India TPA Services (P.) Ltd. Vs. ITO [2013] 40 taxmann.com 78 (Mumbai) (Trib.)**
- Payment towards annual maintenance charges for software maintenance attracts provisions of section 194C and not provisions of section 194J. **ACIT V/s. Bharat Forge Ltd. [2013] 36 taxmann.com 574 (Pune) (Trib.)**
- Payment made for acquiring right for satellite broadcasting of film amounted to 'royalty' within meaning of Explanation 2 to section 9(1)(vi). **ACIT V/s. Shri Balaji Communications [2013] 30 taxmann.com 100 (Chennai) (Trib.)**
- Where assessee had undertaken projects of exploration of oil and natural gas and made payment towards seismic survey and pre-mining activities, said payment would be liable to TDS under section 194J and not 194C. **ACIT V/s. Oil & Natural Gas Corpn. Ltd. [2013] 33 taxmann.com 368 (Ahmedabad) (Trib.)**
- Where assessee-hospital under an agreement was availing services of doctors who fixed their own OPD hours etc. and there was no control of hospital by way of direction to doctors on treatment of patients, it could be said that there was no employer and employee relationship between hospital and professional doctors and, therefore, tax was to be deducted under section 194J and not under section 192. **DCIT V/s. Ivy Health Life Sciences (P.) Ltd. [2013] 31 taxmann.com 236 (Chandigarh) (Trib.)**
- Electricity transmission - Payments made by electricity transmission company to another company to ensure consistent voltage at distribution point, is liable to TDS U/s 194J.

However Charges paid to State Load Dispatch Centres for co-ordination of production and transmission of electricity, is not liable to

- TDS either under section 194J or 194C. **[2012] 24 taxmann.com 300 (AAR - New Delhi)**
- Where transmission charges paid by assessee for supply of gas to oil company was treated as part of cost of gas, provisions of section 194C and 194J were not applicable. **ITO V/s. Samtel Glass Ltd [2013] 35 taxmann.com 473 (Jodhpur) (Trib.)**
- Wheeling and transmission charges paid by electricity distribution companies are not liable for deduction of tax either under section 194J or 194C. **ACIT V/s. Maharashtra State Electricity Distribution Co. Ltd. [2012] 25 taxmann.com 164 (Mum.) (Trib.)**
- Section 194J is not applicable to a stockist appointed by drug manufacturer for sale of drugs on commission basis. **ACIT V/s. Piramal Healthcare Ltd. [2012] 21 taxmann.com 225 (Mum.) (Trib.)**
- Payments made by newspaper company to news agencies is liable for deduction of tax at source under section 194J. **ACIT V/s. Ushodaya Enterprises (P.) Ltd. [2012] 23 taxmann.com 258 (Hyd.) (Trib.)**
- Where 'assessee-trust acted as a nodal agency for State of Andhra Pradesh to provide health care coverage to individuals, payments made to hospitals by assessee for medical services received by hospitals were liable to TDS u/s 194J. **ITO V/s. Arogya Sri Health Care Trust [2012] 20 taxmann.com 539 (Hyd.) (Trib.)**
- Assessee was not liable to deduct tax at source in respect of reimbursement of global management expenses, communication uplink charges and other expenses made to its parent company located abroad. **CIT V/s. Expeditors International (India) (P.) Ltd. [2012] 24 taxmann.com 76 (Delhi) (Trib.)**
- Transaction charges paid to BSE in respect of transactions carried out through BOLT is in nature of 'fees for technical services' covered under section 194J. **CIT V/s. Kotak Securities Ltd. [2011] 15 taxmann.com 77 (Bom.) (H.C.)**
- TDS under section 194J where assessee, a licence holder for manufacture of Indian made foreign liquor (IMFL), had entered into agreement with different parties for

manufacture and sale of IMFL for such parties under their brand name. **ACIT V/s. Vinbros & Co. [2011] 16 taxmann.com 197 (Chennai) (Trib.)**

- Incidental or ancillary services which are connected with carrying on medical profession are included in term 'professional services' for purpose of section 194J. **CBDT V/s. Vipul Medcorp TPA (P.) Ltd. [2011] 14 taxmann.com 13 (Delhi) (H.C.) & ITO V/s. Dr. Francis P. Candies [2011] 12 taxmann.com 269 (Mum.) (Trib.)**
- When M's responsibility was not limited only to provide facility but he was to provide technical qualification of horse riding to students of assessee, provisions of section 194J would apply for deduction of tax at source - Held, yes. **ACIT V/s. Lotus Valley Education Society [2011] 10 taxmann.com 46 (Delhi) (Trib.)**
- VSAT charges, leaseline charges and transaction charges paid by a stock broker to stock exchange are not for providing any technical services but for use of infrastructure facilities provided by stock exchange and, therefore, provisions of section 194J are not attracted to such payments . **ITO V/s. Phoenix Shares & Stock Brokers (P.) Ltd. [2011] 11 taxmann.com 396 (Mum.) (Trib.)**
- Payment for use of services of MTNL/other companies via interconnect/port/access/toll would not fall within purview of payments as provided for under section 194J. **CIT V/s. Bharti Cellular Ltd. [2008] 175 TAXMAN 573 (DELHI) (H.C.)**
- Payments for technical aids and courseware consumption were in nature of purchase of material and, therefore, those payments would not fall within ambit of section 194J - However, as regards payment of fee to use tradename NIIT, copyright and technical know-how in connection with setting up of computer education centre, payments made by assessee in respect of said services would clearly fall within meaning of Explanation 2 to clause (vii) of sub-section (1) of section 9 to which provisions of section 194J were applicable. **ACIT V/s. Frontline Software Services (P.) Ltd. [2010] 122 ITD 325 (INDORE) (Trib.)**
- SBI had charged for MICR facilities regarding identifying, reading and clearing cheques through its special kind of machines, same was in nature of fees for technical services liable to deduction of tax at source as per provisions of section 194J. **ITO V/s. Canara Bank [2009] 117 ITD 207 (AHD.) (Trib.)**
- Where assessee paid certain amount to its holding company for rendering advice or service in respect of human resources development, maintenance of accounts and

finance, service rendered would definitely amount to providing service in managerial/technical field as defined in Explanation (2) to section 9(1)(vii) and, therefore assessee was liable to deduct tax at source under section 194J on payments made to holding company. **DCIT V/s. Tecumseh Products (I) Ltd. [2007] 13 SOT 489 (HYD.) (Trib.)**

- TDS u/s 194J need to be deducted for payment paid to International Airport Authority of India for navigational facilities. **ITO V/s. Singapore Airlines Ltd. [2006] 7 SOT 84 (CHENNAI) (Trib.)**
- Payments made to person engaged in business of providing cellular mobile telephone facility by subscribers, being firms and companies, are not covered by definition of „fees for technical services“ in section 194J. **DCIT V/s. Skycell Communications Ltd. [2001] 119 TAXMAN 496 (MAD.) (H.C.)**.

Section 194LA - Payment of compensation on acquisition of certain immovable property.

Any person responsible for paying to a resident any sum exceeding two lacs, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in any mode, deduct an amount equal to ten per cent of such sum as income-tax thereon.

Important Case Law

- Where acquisition is for Central Government, State Government or other agencies, it is duty of Land Acquisition Officer to deduct tax due to income-tax department from amount of compensation and interest in accordance with provisions of section 194A or 194LA, as the case may be. **State of Kerala v. Mariyamma [2005] 144 TAXMAN 744 (Ker.) (Trib.)**
- Whether if there is a decree of a competent court to pay enhanced compensation on account of acquisition of any land, competent authority has an obligation to deduct tax at source from those amounts – **State of Kerala v. Mariyamma [2006] 152 TAXMAN 498 (Ker.) (Trib.)**
- When at time of award of compensation section 194LA was not in statute book, but it was, when compensation was paid, tax had to be deducted while making payment. **Leela Bhagwansing Advani Union of India [2012] 21 taxmann.com 124 (Bom.) (Trib.)**

- Obligation for deducting tax at source under section 194LA does not arise when payment is made by assessee-metro railways to Competent Authority, but arises when Competent Authority disburses such amount to actual beneficiaries. **Income-tax Officer (TDS), Ward 58(1), Kolkata v. Metro Railway Kolkata [2013] 32 taxmann.com 232 (Kolkata) (Trib.).**

Section 194C - Payments to contractors.

Any person responsible for paying any sum to any resident (Contractor) for carrying out any work including supply of labour in pursuance of a contract between the contractor and a specified person shall, at the time of credit or payment by any mode, whichever is earlier, deduct income-tax thereon at the rates in force on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

However in following cases income tax need not be deducted

Where such sum is credited or paid exclusively for personal purposes of individual or any member of HUF.

If such sum does not exceed thirty thousand rupees, Provided that where the aggregate of the amounts of such sums credited or paid during the financial year exceeds seventy-five thousand rupees, the person responsible for paying such sums shall be liable to deduct income-tax.

No deduction shall be made from any sum credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his PAN Number, to the person paying or crediting such sum.

Important Case Law

- Where assessee-company made payments to its holding company on account of service charges, deputation charges and administrative expenses, since agreement executed between parties was a composite agreement, provisions of section 194C would be attracted to impugned payments. **STCI Commodities Ltd. Vs. ACIT [2013] 40 taxmann.com 154 (Mumbai) (Trib.)**
- In a case of purchase of goods and equipment, provisions of section 194C would not be attracted. **CIT Vs. Krishna Kumar Goel [2014] 41 taxmann.com 113 (H.C.) (Allahabad)**
- Payment made to owners of trucks hired by transport contractor is liable to TDS under section 194C. **ITO ,Ward -1 (3) vs Rajesh A Boricha. [2013] 38 taxmann.com 435 (Rajkot) (Trib.)**

- Payment made by one advertising agency to other advertising agency for getting work done would be subjected to TDS under section 194C. **Akash Tah vs ACIT [2013] 38 taxmann.com 330 (Chandigarh) (Trib.)** .
- Sub-agents of advertising agencies receiving payments from clients are not supposed to deduct TDS under section 194C while remitting same to advertising agencies. **CIT VS Honest Publicity (H.C.) (Gujarat)**
- Assessee-company entered into two separate contracts, namely Supply contract and Installation contract, for procurement and installation of plant and machinery - Such specialised machineries had individual existence, and property therein continued to remain with supplier till they were inspected and tested by supplier and then dispatched to assessee, supply contract was a contract of sale and not a works contract and thus, not requiring deduction of tax at source under section 194C. **NTPC Simhadri super Thermal Power Project vs ITO . [2013] 36 taxmann.com 584 (Visakhapatnam) (Trib.)**
- Where payment made of reimbursement of expenses were purely for business expenses, TDS u/s 194C is not required . **DCIT vs Maruti Freight Movers Ltd [2013] 40 taxmann.com 120 (Kolkata) (Trib.)**
- Where vendors supplied finished goods to assessee at their own risk and cost, and title passed to assessee only on acceptance of goods, it could not be held as work contract under section 194C, merely because assessee gave specifications to vendors in respect of raw materials. **Hero Motocorp Ltd vs ACIT [2013] 36 taxmann.com 103 (Delhi) (Trib.)** .
- Where assessee had a contract for repairing of transformers, tax under section 194C was rightly deducted only on labour charges by excluding value of material used by contractor for repairing of transformers. **CIT VS Executive Engineer (Electricity Stores), Distribution Division [2013] 35 taxmann.com 614 (Allahabad) (H.C.)**
- Where due to heavy workload and pressure to complete work in time, assessee had engaged more than ten persons on contract and payments made to each person without deducting tax at source did not exceed a sum of Rs. 50,000. **CIT VS Kishore Projects (p) ltd [2013] 36 taxmann.com 94 (H.C.) (Gujarat)**.
- Even oral contract is sufficient for invoking TDS provisions. **ITO VS MGB Transport [2013] 35 taxmann.com 51 (Kolkata) (Trib.)**
- Payments made by assessee towards testing and inspection charges could not be construed as payments towards professional service as per provisions of section 194J and assessee had rightly deducted tax under section 194C

- Payment towards windmill operation and maintenance attracts provisions of section 194C
- Payment towards annual maintenance charges for software maintenance attracts provisions of section 194C and not provisions of section 194J
- Training and seminar expenses do not fall under definition of professional services and, accordingly, tax to be deducted under section 194C . **Bharat Forge Ltd vs ACIT [2013] 36 taxmann.com 574 (Pune) (Trib.)**
- Tax is deductible under section 194C in relation to warehousing charges paid to clearing and forwarding agents. **CIT VS Hindustan Lever Ltd [2013] 29 taxmann.com 313 (Delhi) (H.C.)**
- Where contract for improvement of cities came under purview of section 194C, payment for ancillary jobs relating to same would also come under same section. **ACIT VS Pankaj Bhargava [2013] 33 taxmann.com 484 (Delhi) (Trib.)**
- Where relationship between assessee and transporters was not that of contractor and a sub-contractor, section 194C was not attracted. **CIT VS Prashant H Shah [2013] 29 taxmann.com 296 (Gujarat) (H.C.)**
- Salary paid by assessee to deputed employees of other companies who worked under its control and management and whose salary was charge on its profits, did not constitute payment made for works contract coming under section 194C and, thus, assessee was not liable to deduct tax at source while making said payment. **Bhagyanagar Gas Ltd. VS ACIT [2013] 29 taxmann.com 220 (Hyderabad) (Trib.)**
- Where tenderer supplied sachets to assessee-milk producer society as per its specifications by securing material from external source, it could not be held as works contract . **CIT VS Bangalore District Co-operative Milk Producers Societies Union Ltd [2013] 36 taxmann.com 120 (Karnataka) (H.C.)**
- Printing - If a person had given only specification after which printer produced such printed material and delivered same to concerned person, it would be a contract for sale. **Punjab Tractors Ltd. VS ITO [2012] 26 taxmann.com 73 (Chandigarh) (Trib.)**
- Where assessee contractor got work done through another party under his supervision and control, there existed relationship of 'contractor' and 'sub-contractor' requiring assessee to deduct tax at source under section 194C. **Ratan J Batliboi vs ACIT [2012] 24 taxmann.com 96 (Mum.) (Trib.)**
- IT : Payment made by cloth manufacturer for processing and weaving, is liable to TDS under section 194C(1). **Deora Trading Co. vs ITO [2012] 23 taxmann.com 326 (Mum.) (Trib.)**

- When a particular sum is not income at all in hands of payee, requirement of TDS will be non-existent. **MEIL-SEW-MAYTAS-BHEL(JV) vs ITO [2012] 23 taxmann.com 29 (Hyderabad) (Trib.)**
- Where assessee was acting as sub-agent of advertising agencies on commission basis, provisions of section 194C were not attracted on payments made by it to advertising agencies. **ITO VS Honest Publicity [2013] 30 taxmann.com 87 (Ahmedabad) (Trib.)**
- In absence of any contract between assessee-contractor and sub-contractor, assessee was not liable to deduct TDS under section 194C on payments made to them. **Ratnakar Sawant, Dinesh N. Shah & Co. vs ITO [2012] 22 taxmann.com 218 (Mumbai) (Trib.)**
- Payment made by assessee-company, engaged in providing education and training for various preparatory examinations, to its franchisees running education centers across country would not be covered by section 194C. **CIT VS Career Launcher India Ltd [2012] 20 taxmann.com 637 (Delhi) (H.C.)**
- IT : In a case where three separate agreements were entered into : one for supply of goods, second for erection works and third for civil engineering work, section 194C cannot be pressed into service to deduct tax at source on payment for supply of material merely because said agreement is a part of composite transaction. **CIT VS Karnataka Power Transmission Corporation Ltd [2012] 21 taxmann.com 473 (Karnataka) (H.C.)**
- Production of motion films or cinematographic films would fall within meaning of expression 'work' as contemplated under section 194C. **Nitin M. Panchamiya VS ACIT [2012] 19 taxmann.com 200 (Mumbai) (Trib.)**
- TDS under section 194C : Where one of products of assessee had been got prepared from a manufacturing company on certain terms and conditions, transaction entered into between assessee and manufacturing company was a contract for work and not contract for sale. **CIT VS Nova Nordisk Pharma India Ltd [2012] 18 taxmann.com 285 (Karnataka) (H.C.)**
- Service provided by security personnel under a contract with agency would fall within ambit of section 194C because security guards are skilled persons carrying out work of guarding factory premises from any untoward incidence. **GlaxoSmithKline Pharmaceuticals Ltd. VS ITO [2011] 15 taxmann.com 163 (Pune) (Trib.)**

TDS/TCS Rates Chart for A.Y. 2014-15 or F.Y. 2013-14

Section No.	Nature of Payment	Threshold Total Payment During the Year	Payment to	
			Individual or HUF	Others
192	Income from Salaries	-	Average rate	
193	Interest on Debentures	Rs. 5000/-	10%	10%
194	Deemed Dividend	-	10%	10%
194 A	Interest by banks (Other than interest on securities)	Rs. 10000/-	10%	10%
194 A	Interest by Others (Other than interest on securities)	Rs. 5000/-	10%	10%
194 B	Winnings from Lotteries / Puzzle / Game	Rs. 10000/-	30%	30%
194 BB	Winnings from Horse Race	Rs. 5000/-	30%	30%
194 C (1)	Payment to Contractors	Rs. 30000/-	1%	2%
194 C (2)	Payment to Sub-Contractors / for Advertisements	Rs. 30000/-	1%	2%
194 D	Payment of Insurance Commission	Rs. 20000/-	10%	10%
194 EE	Out of deposits under NSS	Rs. 2500/-	20%	NA
194 G	Commission on Sale of Lottery tickets	Rs. 1000/-	10%	10%
194 H	Commission or Brokerage	Rs. 5000/-	10%	10%
194 I	Rent of Land, Building or Furniture	Rs. 180000/-	10%	10%
194 I	Rent of Plant & Machinery	Rs. 180000/-	2%	2%
194 J	Professional / technical services, royalty	Rs. 30000/-	10%	10%
194 J (ba)	w.e.f. 01 .07.2012, Any remuneration / fees / commission to a director of a company, other than those on which tax is deductible under section 192.	-	10%	10%
194 LA	Compensation on <i>acquisition</i> of certain immovable property	Rs. 2,00,000/-	10%	10%
194 IA	Compensation on <i>transfer</i> of certain immovable property other than agricultural land (w.e.f. 01 .06.2013)	Consideration is Rs. 50 Lakh or more.	1%	1%
194LD	Interest on certain bonds & Govt. securities (w.e.f. 01 .06.2013)		5%	5%

TDS Applicability Chart for A.Y. 2014-15 or F.Y. 2013-14

Section	Payer	Recipient	Nature
192 -Salary	Any Person	Any Person	income chargeable under the head "Salaries"
193-Interest on securities	Any Person	Resident	Interest of Securities(defined under clause 28B of Section 2)
194A- Interest other than interest on securities	Specified Person	Resident	Interest other than interest on Securities
194B-Winnings from lottery or crossword puzzle	Any Person	Any Person	Income by way of winning from lottery or crossword puzzle or card game or other game of any sort.
194BB-Winnings from horse race	Any Person	Any Person	Winnings from Horse race
194C- Payments to contractors	Any Person	Resident	Contractual payment for carrying out any work including supply of labour in pursuance of a contract between the contractor and persons specified in sub-clause „A" to „K" of 194(C)(1)
194D-Insurance commission	Any Person	Resident	Income by way of remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business.
194E-Payments to non-resident sportsmen or sports associations	Any Person	Non-Resident Sportsperson	Income referred to Section 115BBA to non-resident sportsman or sports association.
194G-Commission, etc., on the sale of lottery tickets	Any Person	Any Person	Income by way of commission, remuneration or prize on such tickets.
194I-Rent	Specified Person	Resident	Income by way of rent
194J-Fees for professional or technical services	Specified Person	Resident	Fees for professional or technical services or royalty or any sum referred in clause (va) of Section 28
194LA-Payment of compensation on acquisition of certain immovable property	Any Person	Resident	Payment in nature of compensation of enhanced compensation or consideration for compulsory acquisition of immovable property under any law(other than agricultural
Specified Person- Any person, not being an individual or a Hindu undivided family and individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year			