

TDS on Professional Fees U/s 194J

Fact of the case :

Party A raised invoice for professional fee towards his services on Party B. In the invoice, A also specifies amount of reimbursement towards expenses incurred in execution of professional services to B.

Query:

- 1) Whether TDS is required to be deducted on amount of service tax.
- 2) Whether TDS is required to be deducted on reimbursement of expenses which is included in invoice raised for fee for professional fees.
- 3) Whether TDS is required to be deducted on both bills where separate bills are raised for the purpose of professional fees and for reimbursement of actual expenses.

Our View:

- 1) CBDT on whether Service Tax component to be considered for deducting tax on any sum paid as professional and technical fees under section 194J clarified that the payments made under section 194I differ significantly from payments made under section 194J in the way that in the case of 194I, TDS has to be deducted on any income paid as rent. However, in the case of section 194J TDS has to be deducted on any sum paid as professional and technical fees. The CBDT had decided to exclude TDS on service tax component on rental payment because it was construed that service tax payment cannot be regarded as income of the landlord. Since section 194J covers any sum paid, therefore the CBDT has decided not to extend the scope of Circular No. 4/2008 dated 28 April 2008, to such payment under section 194J. *[Circular No. F. No.275/73/2007-IT(B) by Ministry of Finance dated 30 June 2008]*

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In view of the above, TDS is required to be deducted even on the service tax component on professional and technical fees U/s 194J.

- 2) In reply to question no. 30 CBDT circular No. 715 dated 8-8-1995 confirms that TDS on reimbursement is required to be made if a single bill is raised for the professional fee inclusive of reimbursement of expenses. **In such cases TDS is to be made on gross amount** i.e. on the aggregate amount of professional fee and amount of reimbursement of expenses.

- 3) On the other hand, where separate bills are raised for professional fee and for reimbursement of actual expenses duly supported by expense bills, whether TDS should be deducted or not on invoice for reimbursement of expenses. The Delhi bench of the Income Tax Appellate Tribunal in **ITO Vs. Dr. Willmar Schwabe India (P) Ltd. [2005] 3 SOT 71** examined the scope of Circular No.715 dt.8-8-1995 on the subject of deduction of tax at source on expenses reimbursement and upon perusal of the same, held that reimbursement of expenses for which bill is separately raised did not attract the provisions of Section 194J. Accordingly, **no TDS is required to be deducted on such reimbursement of expenses.**