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SECTION 194H : AN ANALYTICAL REVIEW

- Rahul Sharma

B.Com, FCA, MBA (Fin.), LI.b., CAIIB

Who Shall deduct Tax: Any person, not being an individual or a Hindu undivided family **and also** an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid.

What is Commission or Brokerage: it **includes** any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities.

Professional Services means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA.

Though the word in definition is “includes” but the intent of legislature drawn from various case laws make it clear that commission or brokerage are paid **only** in cases where “**Principal and Agent**” relationship exist. When the relationship between payer and payee is “Principal to Principal” then section 194H is not attracted.



Where there was no principal – agent relationship between the assessee & its distributor and distributors were not working for and on behalf of the assessee & on the basis of the facts it is clearly established that the ownership of goods stood transferred to the distributor before onward sale to ultimate consume. It was held that it was a case of direct sales and not a case of sales through distributor (Agent). Therefore Section 194H was not attracted at all and there was no question of penalizing assess under section 201. [**Ajmer Zila Dugh utpadiksang Ltd. Vs. ITO (2009) DTR 418 (JP) (Trib.)**]

Ajmer Zila Dugdh Utpadak Sangh Ltd Vs ITO (34 SOT 216), principal agent relationship is a sine qua non for invoking the provisions of Section 194 H. In the case before us, there is no principal agent relationship between the bank issuing the bank guarantee and the assessee. When bank issues the bank guarantee, on behalf of the assessee, all it does is to accept the commitment of making payment of a specified amount to, on demand, the beneficiary, and it is in consideration of this commitment, the bank charges a fees which is customarily termed as 'bank guarantee commission'. While it is termed as 'guarantee commission', it is not in the nature of 'commission' as it is understood in common business parlance and in the context of the section 194H. [**Kotak Securities Ltd Vs. DCIT**]

Sr. No.	Case Law	Decision
1.	Ahmedabad Stamp Vendors Association Vs. UOI (2002) 257 ITR 202 (GUJ)	Stamp vendors purchases stamp papers at price less discount on principal to principal basis – not liable under 194H
2.	PCIT Vs Dempo Industries Pvt. Ltd. (2021) 126 taxmann.com 112 (Bombay)	Trade discounts given to person selling news papers by publishing house – not commission, 194H not applies.
3.	CIT VS Singapore Airlines Ltd (2009) 319 ITR 29 (Del)	Collection of fare from travelers by agents on behalf of airline company is principal – agent relationship and commission eared is liable to TDS U/s 194 H
4.	Delhi Milk Scheme Vs. ITO (2008) 301 ITR 373 (Del.)	Consideration paid by assessee to its agents for selling milk provided by milk vans was commission and not discounted sales.



Sr. No.	Case Law	Decision
5.	CIT Vs. Idea Celluler Ltd. (2021) 125 taxman.com 172 (SC)	Sim Card/recharge coupons sold by the company at discounted rate which were ultimately sold to subscribers – discount earned is not commission
6.	PCIT Vs Make my trip India (P) Ltd. (2019) 104 taxmann.com (263) (Del)	Fees paid by company to banks for providing gateway – not commission not liable U/s 194H
7.	PCIT Vs. Shalimar Chemical Works Ltd. (2018) 257 Taxman 590 (Cal)	Payment of target incentives to dealers for increasing sales – not commission not liable for TDS U/s 194H

Rate of TDS : TDS shall be deducted @ 5%. If PAN is not available tax rate shall be 20%.

Certain Relevant Circulars :

Circular No.619, dated 04.12.1991

A question may raise whether there would be deduction of tax at source under section 194H where commission or brokerage is retained by the consignee/agent and not remitted to the consignor/principal while remitting the sale consideration. It may be clarified that since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission. **Therefore, the consignor/principal will have to deposit the tax deductible on the amount of commission income to the credit of the Central Government, within the prescribed time, as explained in the succeeding paragraphs.**

Circular No. 6/2003 dated 03.09.2003:

The work of receipt of tax payments and issue of refunds is conducted by the Banks authorized for such purposes by the Reserve Bank of India (RBI). As a compensation for the work so conducted, the Central Government pays to the Banks, through RBI, commission termed as "Turnover Commission".

It has been represented to the Board that the requirement of tax deduction at source under



section 194H should not be applicable in respect of Turnover Commission payable by the Reserve Bank of India to the Agency Banks (Banks authorized for conducting Government business) for performing the general banking business of the Central and State Governments on behalf of RBI.

The matter was considered in the Board and it has been decided that **tax would not be required to be deducted by RBI on the amount of Turnover Commission paid or credited by it.**

Notification No. 47/2016/ F. No. 275/53/2012 – IT(B)

the Central Government notified that no deduction of tax under Chapter XVII of the Income Tax Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, or to any payment systems company authorized by the Reserve Bank of India under Sub-section (2) of Section 4 of the Payment and Settlement Systems Act, 2007 (51 of 2007), namely :-

- (i) bank guarantee commission;
 - (ii) cash management service charges;
 - (iii) depository charges on maintenance of DEMAT accounts;
 - (iv) charges for warehousing services for commodities;
 - (v) underwriting service charges;
 - (vi) clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
 - (vii) credit card or debit card commission for transaction between merchant establishment and acquirer bank.
2. This notification shall come into force from the date of its publication in the Official Gazette.



When tax is not to be deducted or to be deducted at lower rate [Section 197 and Rule 28 & 28AA]:

Application for grant of certificates for deduction of income-tax at any lower rates or no deduction of income-tax.

28(1) An application by a person for grant of a certificate for the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, under sub-section (1) of section 197 shall be made in Form No. 13 electronically, —

- i. under digital signature; or
- ii. through electronic verification code.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the furnishing of Form No.13.;

Certificate for deduction at lower rates or no deduction of tax from income other than dividends.

28AA (1) Where the Assessing Officer, on an application made by a person under sub-rule (1) of rule 28 is satisfied that existing and estimated tax liability of a person justifies the deduction of tax at lower rate or no deduction of tax, as the case may be, the Assessing Officer shall issue a certificate in accordance with the provisions of sub-section (1) of section 197 for deduction of tax at such lower rate or no deduction of tax.

(2) The existing and estimated liability referred to in sub-rule (1) shall be determined by the Assessing Officer after taking into consideration the following:—

(i)	tax payable on estimated income of the previous year relevant to the assessment year;
(ii)	tax payable on the assessed or returned [or estimated income, as the case may be, of last four] previous years;
(iii)	existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957;



(iv)	advance tax payment ³ [tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28];
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3) The certificate shall be valid for such period of the previous year as may be specified in the certificate, unless it is cancelled by the Assessing Officer at any time before the expiry of the specified period.

[(4) The certificate for deduction of tax at any lower rates or no deduction of tax, as the case may be, shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate:

Provided that where the number of persons responsible for deducting the tax is likely to exceed one hundred and the details of such persons are not available at the time of making application with the person making such application, the certificate for deduction of tax at lower rate may be issued to the person who made an application for issue of such certificate, authorizing him to receive income or sum after deduction of tax at lower rate.

(5) The certificates referred to in sub-rule (4) shall be valid only with regard to the person responsible for deducting the tax and named therein and certificate referred to in proviso to the sub-rule (4) shall be valid with regard to the person who made an application for issue of such certificate.

[(6) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for issuance of certificates under sub-rule (4) and proviso thereto and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the issuance of said certificate.]

ACTIVITIES - APRIL, 2023



**One Day Seminar on Companies Act, organized by Corporate Laws and Corporate Governance Committee of ICAI. Inauguration - Sri. E.T.Mohammed Basheer, MP
Speakers - CA. Sripriya K., CA. Jomon K George, Mr. K.T. Saraanabhava - 29.04.2023**



Interaction with Industrialist - 10.04.2023

UPCOMING PROGRAMMES MAY, 2023

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CPE Seminar on Taxation of 'Specified Entities' under the Income-tax Act on Reconstitution and Dissolution

Speakers : CA. M. V. Venugopal , Calicut
Time : 5:00 pm

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One Day Workshop on RERA, organized by Committee on Commercial Laws, Economic Advisory & NPO Cooperative of ICAI

Speakers : 1. CA Ramesh Prabhu, Mumbai
2. Mr. P H Kurian IAS (Retd.), Chairman K-RERA

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Seminar on Reassessments Under New Scheme Issues and Procedures

Speakers : CA. Rajagopalakrishnan R., Calicut
Time : 5:00 pm

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Residential Refresher Course at Mysuru under the aegis of CPE Committee of ICAI

HOLIDAYS - MAY, 2023

Date	Particulars
01.05.2023	May Day

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to icaikoznewsletter@gmail.com along with name, membership number and mobile number.

