

F.No. 275/06/2016-IT(B)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes (CBDT)

New Delhi, Dated: 29th February, 2016

Sub: Tax Deduction at Source (TDS) on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements.

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the Board in view of representations received in this regard.

2. It is noted that there are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and

(ii) Payment by advertising agency to the television channel/ newspaper company

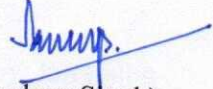
The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8.8.1995, where it has been clarified in Questions No. 1 & 2 that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

3. However, another issue has been raised in various cases as to whether the fees/ charges taken or retained by advertising companies from media companies for canvassing/ booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. It has been argued by the assesseees that since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H. The Department, on the other hand, has taken the stand in some cases that since the advertising agencies act on behalf of the media companies for procuring advertisements, the margin retained by the former amounts to constructive payment of commission and, accordingly, TDS under section 194H is attracted.

4. The issue has been examined by the Allahabad High Court in the case of Jagran Prakashan Ltd and Delhi High Court in the matter of Living Media Limited and it was held in both the cases that the relationship between the media company and the advertising agency is that of a 'principal to principal' and, therefore, not liable for TDS under section 194H. The SLPs filed by the Department in the matter of Living Media Ltd. and Jagran Prakashan Ltd have been dismissed by the Supreme Court vide order dated 11.12.2009 and order dated 05.05.2014, respectively. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/ television advertising as the broad nature of the activities involved is similar.

5. In view of the above, it is hereby clarified that no TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the Board's Circular No. 715 dated 8.8.95 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

Hindi version follows.



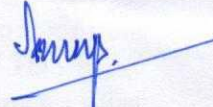
(Sandeep Singh)

Under Secretary to Government of India

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(Sandeep Singh)

Under Secretary to Government of India