Bombay High Court strikes down Withholding Tax on fees paid to Professionals

In a landmark decision issued on July 14, 1994, the Bombay High Court held that there may be no withholding of tax at source on payments made to professionals, because ‘professionals’ are not contractors. Section 194C of the Indian Income Tax Act 1961 (ITA) requires deduction of tax at source on payments made to contractors exceeding Rs 20,000 in a financial year.

A two-member bench consisting of Justice Dr B P Saraf and Justice M D Dudhat set aside the Central Board of Direct Taxes circular No 681 dated March 8, 1994, to the extent it pertained to the payment of fees for professional services. The circular had extended the scope of the provisions of section 194C of the ITA to all types of service contracts. This included services rendered by such persons as lawyers, physicians, surgeons, engineers, accountants, architects, consultants, etc. The tax would not apply to payments made in the nature of salaries, which are chargeable under the head ‘salary income.’

The petitioners included, among others, the Bombay Chartered Accountants Society, the Chamber of Income Tax Consultants and the All India Federation of Tax Practitioners. (Courtesy: Tax Notes International)