

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA Nos.1124 to 1127/Bang/2015
Assessment years : 2011-12 to 2014-15

The Assistant Commissioner of Income Tax (TDS), Circle 1(1), Bangalore.	Vs.	The Director of Technical Education, Technical Education Building, Opp. Maharani College, Palace Road, Bangalore – 560 001. TAN: BLRD02314E
APPELLANT		RESPONDENT

Appellant by	:	Dr. P.K. Srihari, Addl. CIT(DR)
Respondent by	:	Shri Shreehari Kutsa, CA

Date of hearing	:	18.05.2016
Date of Pronouncement	:	20.05.2016

ORDER

Per Bench

These appeals are by the Revenue directed against the order of CIT(Appeals)-V, Bangalore dated 28.10.2014 for the assessment years 2011-12 to 2014-15. Since in all these appeals, common issue is involved, we proceed to dispose of the same by this consolidated order.

2. The Revenue has raised the following common grounds of appeal:-

“1. The order of the Ld. CIT(A) is opposed to the facts and law.

2. The Ld CIT(A) has erred in holding that the payees i.e. M/s. RITES Ltd and M/s. KHB are not contractors of the payer i.e Director of Technical Education, as envisaged in Section 194C.

3. The Ld CIT(A) has erred in holding that the payees i.e. M/s. RITES Ltd and M/s. KHB are rendering technical and managerial services for the payer.

4. The Ld CIT(A) has erred in holding that the payees i.e. M/s RITES Ltd and M/s KHB are acting as agents vis-a-vis the contractors actually executing the construction work of buildings for the payer.

5. The Ld CIT(A) has erred in not considering the facts brought out by the AO to the effect that payees i.e. M/s RITES Ltd and M/s KHB were awarded the contract for construction of college buildings.

6. The Ld CIT(A) has erred in not considering the facts brought out by the AO to the effect that payees i.e. M/s RITES Ltd. and M/s KHB have quoted the construction cost of college buildings and were paid for that purpose.

7. The Ld CIT(A) has erred in not considering the position of law that in terms of Section 194C, the contract includes sub-contract.

8. The Ld CIT(A) has erred facts in directing the AO to work out the remuneration component in the impugned payments and work out tax deductible u/s 194J.

9. The Ld CI-T(A) has erred facts in placing reliance on the decision in the case of M/s U.P. State Industrial Development Corporation Ltd v ITO [2002] 81 ITD 173 (Lucknow) and allowing relief.

10. The Ld CIT(A) has erred in holding that the benefit under proviso to section 201(1) is available on production of declaration in 26A, though no tax is remitted by the payee M/s KHB in its income tax return.

11. The Ld CIT(A) has erred in holding that the benefit under proviso to section 201(1) is available on production of declaration in 26A, though full amount is not accounted as income by the payee M/s RITES Ltd.

12. For the above grounds and others that may be sought at the time of hearing, it is prayed that the order of Ld. CIT(Appeal) is set aside and orders of the Assessing officer are restored.”

3. Briefly the facts are as under. The respondent-assessee had entered into an agreement with M/s. KHB and M/s. RITES Ltd. for rendering of services in connection with construction of Engineering and Polytechnic College buildings in the State of Karnataka. The TDS Officer noticed that the respondent-assessee had not deducted tax at source on the payments made to the above parties under the provisions of section 194C of the Act and he therefore held the respondent-assessee as an “assessee in default” for not deducting tax at source and raised demand as under:-

Assessment Year	Demand raised by way of separate orders		
	Section 201(1)	Section 201(1A)	Total
2011-12	1,79,76,000	55,13,040	2,39,84,090
2012-13	65,39,740	14,94,434	66,84,174
2013-14	33,80,040	3,14,121	36,94,161
2014-15	25,44,000	1,19,400	26,63,400
Total	3,04,39,780	74,40,995	3,78,80,775

4. Being aggrieved by these assessments, appeals were preferred before the CIT(Appeals), who vide impugned order held that the payments in question were not in the nature of consideration for works contract and therefore, there was no liability under the provisions of section 194C of the Act. He, however, held that such payments are liable for tax deduction at source under the provisions of section 194J of the Act. On noticing that the respondent-assessee had deducted tax at source under the provisions of section 194J, subsequently the CIT(Appeals) upheld the liability on interest u/s. 201(1A) of the Act on the delay in deduction of tax deduction at source under the provisions of section 194J of the Act.

5. The Revenue, being aggrieved by the part of direction of the CIT(Appeals) that such payments are not liable for tax deduction at source u/s. 194C, filed the present appeals before us.

6. The Id. Sr. DR vehemently contested that the subject payments were in the nature of consideration paid for works contract and therefore the CIT(Appeals) had failed to consider such payments in the proper perspective. He submitted that the order passed by the CIT(Appeals) is not in accordance with law and prayed for quashing of the impugned order.

7. On the other hand, the Id. AR of the respondent-assessee submitted that the CIT(Appeals) has passed the impugned order after perusing the relevant clauses of the agreements entered by the respondent-assessee with KHB and RITES Ltd. He submitted that KHB / RITES Ltd. had not

undertaken any works with the respondent-assessee. They have rendered only technical services in connection with the execution of the construction works for Engineering & Polytechnic College buildings in the state of Karnataka. In this connection, he has drawn our attention to the relevant clause of the agreements and also the order of CIT(Appeals). He also relied on the decision of the coordinate Bench of Lucknow in the case of M/s U.P. State Industrial Development Corporation Ltd v ITO [2002] 81 ITD 173 (Lucknow).

8. We have heard the rival submissions and perused the material on record. The issue in appeal is whether the said payments made by the respondent-assessee to KHB and RITES Ltd. are in the nature of consideration paid for works contract. The CIT(Appeals) after perusing the relevant agreements had summarized the position vide para 6 of his order, which reads as under:-

“6. Coming to the issue as to whether the amounts paid to KHB and RITES for each of the year under appeal are payments in the nature of contract income of the recipient payees, liable to deduction of tax u/s 194C, it is clear from the terms of agreement entered by the appellant with KHB and RITES that they are not contractors for the execution of actual work of construction of college buildings for the appellant. Although the fact that tax was deducted by them while making payments to contractors would not help the appellant's case, it is pertinent to examine the terms of engagement of the appellant with KHB and RITES, which shows that they are not contractors as envisaged in Section 194C, but rendering technical and managerial services for the appellant and also acting as agents vis-a-vis the contractors actually executing the construction work of buildings for the appellant. They are more

of technical consultants and project managers who are required to carry out survey, soil testing, design of building, invite tenders to identify contractors for construction, supervise the construction for quality and design and also certify the bills for payment to contractors executing the construction of college buildings. The agreement also specifies the remuneration for services rendered by KHB and RITES (10% of the built up cost) with regard to and a percentage of the project cost, and the provision for payment on actual basis in the nature of re-imbusement. I concur with the argument of Ld. AR that the issue is squarely covered by the Hon'ble ITAT- Lucknow Bench decision in the case of U.P. State Industrial Development Corpn. Ltd. v. ITO reported in 81 ITD 173. The payees in the present case are not contractors within the meaning of section 194C of the Income Tax Act. The entire payment made by the appellant to KHB and Rites are not in the nature of income of the payees, and such entire amounts could not be said to be liable for deduction of tax u/s 194C. In fact, the payment to the extent of remuneration payable to KHB and RITES as percentage of the project cost is in the nature of income of professional/technical and managerial nature liable to deduction of tax u/s 194J. The Assessing Officer is therefore directed to compute the amounts out of payments made by the appellant to KHB and RITES which are remuneration or income in the hands of the payees, and work out the tax deductible u/s 194J. The question is answered accordingly. The ground of the appellant on the issue is partly allowed for AY 2011-12, 2012-13, and 2013-14.”

9. The Id. Sr. DR had not filed any evidence controverting the above findings of the CIT(Appeals). The CIT(Appeals) after considering the relevant material had come to the conclusion that the payments were made in consideration of technical services rendered by the payees. In the absence of any material controverting this finding, we have no reason to interfere with the order of CIT(Appeals), hence confirm the order of CIT(Appeals).

10. In the result, the appeals filed by the Revenue are dismissed.

Pronounced in the open court on this 20th day of May, 2016.

Sd/-

(VIJAY PAL RAO)
Judicial Member

Sd/-

(INTURI RAMA RAO)
Accountant Member

Bangalore,
Dated, the 20th May, 2016.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.