

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA Nos.2289 to 2291/Bang/2016
(Assessment years: 2011-12 to 2013-14)

Deputy Commissioner of Income-tax,
TDS circle-16(1), Bengaluru ... Appellant

Vs.

The Commissioner of Collegiate Education,
2nd floor, Technical Education Bldg.,
Opp.Maharani College, Palace Road,
Bengaluru-560001.
PAN: AAAAT 9383 J ... Respondent

Appellant by : Shri S.Nambirajan, Addl.CIT(DR)
Respondent by : Shri Sreehari Kutsa, CA

Date of hearing : 25/09/2017
Date of pronouncement : 27/09/2017

O R D E R

Per INTURI RAMA RAO, AM :

These are appeals filed by the revenue directed against the order of the common order of the Commissioner of Income-tax (Appeals)-13 [CIT(A)], Bengaluru, for the assessment years 2011-12 to 2013-14.

2. The revenue raised the following grounds of appeal:

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1. The order of CIT(A) is opposed to the facts and nature of the case on hand.
2. The Id. CIT (A) erred in holding that the assessee was not required to deduct tax at source u/s. 194C of the Income Tax Act, 1961.
3. The Ld. CIT(A) ought to have considered the fact that the work entrusted by the assessee to M/s. Karnataka Housing Board (KHB) and M/s. RITES Ltd. was not mere consultancy but overall responsibility of construction of the building right from design to completion of work which are clearly in the nature of contracts and attracts provision of Section 194C of the Act.
4. The Ld. CIT(A) erred in holding that the payment made to KHB and RITES are in the nature of income from professional/technical and managerial services which are liable to deduction of tax u/s. 194J of the Act.

For these and other grounds that may be raised during the course of appeal and actual hearing it is prayed that the order passed by the AO u/s. 201(1) and 201(1A) be upheld and the order of the learned Commissioner of Income Tax (Appeals) may be set aside and cancelled.

3. Briefly, facts of the case are that the respondent-assessee is a Department of Government of Karnataka which is in-charge of academic administration functions of controlling graduate education in the State of Karnataka. For the purpose of construction of college building, it entered into agreement with the Karnataka Housing Board (KHB) and Rail India Technical and Economic Services Ltd. (RITES). The Assessing Officer [hereinafter referred to as 'AO (TDS officer)'] conducted inquiries and found that the respondent-assessee had not deducted tax at source on the following payments under the provisions of section 194C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]:

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Sl.No.	Name of Payee	Date of payment	Amount in Rs.
1	Karnataka Housing Board	07.09.2010	1,25,00,000/-
2	Karnataka Housing Board	03.11.2010	1,00,00,000/-
3.	RITES Ltd.	15.02.2011	4,75,66,000/-
4	RITES Ltd.	07.03.2011	2,31,54,000/-
	Total		9,32,20,000/-

Accordingly, the AO (TDS officer) passed order u/s 201(1) of the Act dated 03/10/2013 holding the respondent-assessee in default and demanding tax along with interest us 201(1A) of the Act.

4. Being aggrieved by the above order, an appeal was preferred before the CIT(A) who, vide impugned order, following the order of the ITAT in the case of Director, Technical Education, in ITA Nos.1124 to 1127/Bang/2015 dated 20/05/2016 held that the payments are not in the nature of contract payments but in the nature of fees for professional and technical services. Accordingly, the matter was set aside to the AO(TDS) to re-compute the tax liability u/s 194C of the Act.

5. Being aggrieved, the revenue is in appeal before us. During the course of hearing, the learned AR of the assessee submitted that the issue in the appeals is covered in favour of the assessee by the co-ordinate bench of Tribunal in the case of Director, Technical Education (supra) wherein it was held as follows:

õ6. 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 our survey, soil testing, design of building, invite tenders to identify contractors for

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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 reimbursement. 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 artly allowed for AY 2011-12, 2012-13, and 2013-14.ö

Since the CIT(A) has only followed the Tribunal order in assessee's own case for earlier years, we do not see any reason to interfere with the order of the CIT(A).

6. In the result, the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 27th September, 2017

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Place : Bengaluru
D a t e d : 27/09/2017
srinivasulu, sps

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Copy to :

- 1 Appellant
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- 4 CIT
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By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore