

आयकर अपीलीय अधिकरण, मुंबई “ आई” खंडपीठ
Income-tax Appellate Tribunal -“I”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member
आयकर अपील सं./I.T.A./3166-3168/Mum/2014,
निर्धारण वर्ष /Assessment Year: 2008-09 to 2010-11

Income tax Officer (TDS)-2(3),7th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building,Charni Road,Mumbai-400 002. PAN:AAATM 5001 D	v/s	M/s. Mumbai Port Trust & Tender Branch Thakersey House, Vallabhdas Marg, Ballard Estate, Mumbai-400 001.
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आयकर अपील सं./I.T.A./463/Mum/2015, निर्धारण वर्ष /Assessment Year: 2011-12

आयकर अपील सं./I.T.A./3930/Mum/2015, निर्धारण वर्ष /Assessment Year: 2012-13

Income tax Officer (TDS)-2(3),7th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building,Charni Road,Mumbai-400 002.	v/s	M/s. Mumbai Port Trust & Tender Branch Thakersey House, Vallabhdas Marg, Ballard Estate,Mumbai-400 001.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Saurabh Kumar Rai-DR

Assessee by: Shri Hari S. Raheja

सुनवाई की तारीख / Date of Hearing: 02.08.2017

घोषणा की तारीख / Date of Pronouncement: 11.10.2017

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the orders,dated 14/2/2013,3/11/2014 & 24/4/2015 of the CIT(A)-13,Mumbai
CIT(A)-14,Mumbai & CIT(A)-59, Mumbai,the Assessing Officers (AO.s)have filed the
appeals for the above mentioned Assessment years(AY.s).As the issues involved in these
appeals are identical,so,we are adjudicating all the appeals together.

ITA/3166/Mum/2014,AY.2008-09:

2.First Ground of appeal is about applicability of section 194C as against the provisions of section 194J of the Act.A survey action,u/s.133A of the Act,was conducted at the office premises of the assessee on 4/3/2011 to verify as to whether there was a proper compliance of the TDS provisions.As per the AO,during the course of survey proceedings it was noticed that assessee was awarding large number of contracts ranging from repairs and maintenance of its staff quarters/godowns to design new/manufacturing/commissioning/ tugs and launches etc. to meet its operations/obligations.He further observed that some of the contracts prima facie appeared technical in nature while some other qualified as purely hiring arrangements, that it had made certain payments to various parties/contractors,that it had deducted tax as per the provisions of section 194 C of the Act,that payments made for contracts where technical services were availed,that tax had to be deducted as envisaged under provisions of section

194J, that payments made in the nature of hiring arrangements should have been subjected to provisions of section 194-I. He asked the assessee to file certain details in that regard. Accordingly, party-wise details along with tender-value, nature of work, nature of job done by the contractors for the assessee were submitted. After considering the same the AO held that services rendered by the contractors/service providers were in the nature of technical services, that the assessee ought to have deducted tax u/s. 194J of the Act. For the shortfall, he levied tax u/s. 201 and interest u/s. 201(1A) of the Act.

(i)	Designed construction supply and delivery of float in Mumbai harbor highly maneuverable 12.5 ton Bollard Pull Diesel Tugs.
(ii)	Designed construction and commissioning of Caisson Gate at HDD, Indira Dock.
(iii)	Designed construction supply and delivery of float in Mumbai harbor 4 Nos. all weather, Pilot Launches.
(iv)	Major overhauling of both side STBD and port side main caterpillar Engines model 3412.
(v)	Providing rail tracks for 16 ton capacity Ell Wharf Cranes.
(vi)	Designed manufacture. Supply, deliver, installation, testing and commissioning of 3 x 16 tones electric level lifting Wharf Cranes.
(vii)	Triennial Maintenance contract for maintain PLC & SCADA system at OPL Wadala.
(viii)	Maintenance dredging in approach channels, turning circles and outside berths of MbPT.
(ix)	Capital dredging works in Mumbai Port.
(x)	Cleaning operation on water born pollution etc. from Ferry Wharf to Sewreee Mud flat.
(xi)	Supply of Launches on hire for transporting MbPT staff for three years
(xii)	Hire of harbor tugs for 5 years and extendable for 2 more years.
(xiii)	Hiring of AC Cars.

With regard to payments made to three parties namely Great Offshore Ltd.; Bombay Ferryship to Shore Services and Capital Tourist Taxi Operators, the AO held that same were hiring arrangements and assessee should have deducted tax u/s. 194-I of the Act. He levied tax as well as interest u/s. 201 and 201(1A). In total, he raised a demand of Rs. 2.44 crores.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) and made detailed submissions. It also referred to certain case laws. Explanation of short deduction of tax for alleged technical services was also filed.

After considering order passed by AO u/s. 201/201(1A) of the Act and the submissions of the assessee, the FAA held that all the contracts were given to perform routine jobs, that they were awarded for repair and maintenance purpose in order to keep assets in proper condition or to get a final product for construction, that in the case of TRF Ltd. the contractor was given job for designing, manufacturing and supply, delivery, installation and commissioning of cranes, that it had not received any technical services, that a final product was delivered to it, that the routine repair and maintenance done on machines was to be included under the ambit of section 194 C, as per Circular issued by the CBDT on 8/8/1995 (Cir.No.715) and 30/8/1995 (Cir.No.829 of 1995).

3.1.With regard to hiring of vehicle to transport employees through Capital Tourist Taxi Operators,the FAA held that claim made by assessee was supported by bills and terms of contract ,that the contracts were not for having vehicles.He referred to cases of Kandla Port Trust(ITA/451/Rjt/2012)and Associated Cement Co.Ltd.(201 ITR 435)and allowed the appeal filed by the assessee .

4.During the course of hearing before us,the Departmental Representative (DR) supported the order of the AO and stated that contracts entered into by the assessee were for providing technical services, or for hiring of vehicles,that the assessee should have deducted tax as per provisions of Section 194J or 194-I of the Act. The Authorised Representative (AR) stated that Shree Engineering Services carried out major overhauling of port side main engine (Rs.8.63 lakhs), that machinery and equipment were required routine repair and maintenance, he referred to Circular No.715 and Circular No. 710 as well as case of Eastern Typewriter Services (42 STC 18).With regard to payment made to EMCEE Rail Linker (Rs.87.44 lakhs) he stated that payment was made against erection of railway line for movement of crane, that it was a works contract as defined in section 194C of the Act. He referred to case of Waves Electronics(P.)Ltd.(82STC143),wherein contract for designing, assembling, supply and erection of switchboard was held to be a works contract. About TRF Ltd. (Rs.2.70 crores),he argued that it was a contract for designing, manufacturing, supply, delivery, installation and commissioning of three cranes and stated that it was a work contract.He referred to case of Haryana Power Generation Corp. Ltd.(103TTJ584) and NTPC (145ITD25).About the payment made to City Lift Ltd.,the AR stated that, contract was for comprehensive annual maintenance of lifts (Rs.2.74 lakhs) located at various points. Regarding payment made of Danish Sales Corpn.(Rs.67.73 lakhs),he submitted that it was contract for electrical installation,that it did not result in technical service,that it was a works contract the contract of supply, erection, testing and commissioning of lighting system.About the contract with I.V. & Sons Engg.Works(Rs.1.11 lakhs),he argued that contract was for overhauling of engine and repair of electrical panels.He relied upon the case of Bharat Forge Ltd.(1357/Pun/2010). With regard to payment made to Great Offshore Ltd. (Rs.8.71 crores.) the AR stated that the contract was awarded for hiring of tugs to assist in landing of ships and dues charges at the prescribed rate incurred during the said activity.He relied upon the case of Accenture Services P. Ltd. (44SOT290); and that Tata AIG General Insurance Co.(43SOT215).About the payment made of BFS to SS (Rs.16.21 lakhs),he contended that contract was to supply of launches on hire for transportation of members of staff between princess dock and Jawahar

dweep.He relied upon the case of Ahmedabad Urban Development Authority (ITA/1637/Ahd./2010)and Accenture Services and Tata AIG General Insurance Co. for the payment made to Capital Tourist Taxi Operators.He submitted that payment of Rs.5.43 lakhs was made for hiring of vehicle to transfer the employees.

On a query by the Bench the AR stated that all the parties,receiving payments from the assessee,had shown the receipts in their returns of income.The AR also supplied names of the contractors along with their PAN who had dealt with the assessee during the year under consideration.

5.We have heard the rival submission and perused the material before us.We find that AO had held that assessee should have deducted tax u/s. 194J and 194-I of the Act for various payment made to parties who had carried out piece of work for assessee or had rendered service to it.TDS provisions were included in Act to ensure the payment of taxes from the recipient of the income and to keep a trail of payments received by contractors.

5.1.In our opinion,it will be useful to consider the case of Bharat Heavy Electricals Ltd.(390 ITR 322) of the Hon'ble P&H High Court,which deals with section 194 and 194 J of the Act. In that matter a survey was conducted under section 133A of the Act at the office premises of the assessee.The AO found that the assessee had made payments to five contractors in respect of various contracts and deducted tax in respect thereof under section 194C@ 2%.He observed that all the contracts involved the provision of professional and technical services which fell within the ambit of the provisions of section 194J and not u/s.194C,that the contracts were not only for the erection and installation work, but also for the commissioning, testing and trial operation of the various equipment and other related machinery,that under the terms of the contract it was the duty of the contractor to provide all types of labour, supervisors,engineers,inspectors, measuring and testing equipment,testing and commissioning for the execution of the project in accordance with the specifications of the assessee,that the level of human intervention was high and sophisticated.Accordingly, he held the assessee in default under section 201(1A) for having failed to deduct the tax at source and invoked the provisions of sections 200 and 201 read with rule 30 of the Income-tax Rules, 1962. In the appellate proceedings,the FAA held that the scope of the work given to the sub-contractors involved construction work, welding, erection, alignment, transportation of equipment and materials with the help of machines which did not fall within the scope of technical services as defined in Explanation 2 to section 9(1)(vii)of the Act, that merely because technical personnel were employed in the execution of the contract it did not follow that the contract

was one for technical services. The Appellate Tribunal confirmed the findings of the FAA. Dismissing the appeal, filed by the Department, the Hon'ble High court held as follow:

“...the contract entered into between the assessee and each of the contractors did not involve supply of professional or technical services at least within the meaning of section 194J of the Income-tax Act, 1961. Therefore, the considerations paid under the contracts were not for professional or technical services rendered by the contractors to the assessee and section 194J was not applicable. The technical personnel were deployed not for and on behalf of the customer, but for and on behalf of the contractor itself with a view to ensuring that the contractor supplied the equipment in accordance with the contractual specifications. The nature of human intervention was reflected in the terms and conditions of the agreement itself. ... Section 194J of the Income-tax Act, 1961 is not a residuary clause. In other words, it is not that if a contract does not fall within the ambit of section 194C, it must be deemed to fall within the ambit of section 194J. Sections 194C and 194J are independent provisions.”

Clearly, all contracts cannot be categorised as contract for supply of professional or technical services, as envisaged by the provisions of section 194 J of the Act. Section 194C of the Act deals with contract of work and Sec. 194J is about technical services offered by the contractors. We have gone through the details of various contracts awarded by assessee to different parties. Prima facie all contracts do not involve rendering of any technical knowledge /services to the assessee or all the contracts were for routine services including repairing and providing maintenance. Here, we would like to refer to the case of Associated Cement Co. Ltd. (supra) and it reads as under:

“No ambiguity is found in the language employed in section 194C(1). On plain reading of said section, what is contained in the sub-section, admits of the following formulations:

- (1) A contract may be entered into between the contractor and any of the organisations specified in the sub-section.*
- (2) Contract in formulation could not only be for carrying out any work but also for supply of labour for carrying out any work.*
- (3) Any person responsible for paying any sum to a contractor in pursuance of the contract in formulations 1 and 2, could credit that sum to his account or make its payment to him in any other manner.*
- (4) But when the person referred to in formulation 3 either credits the sum referred to therein to the account of or pays it to the contractor, he shall deduct out of that sum an amount equal to two per cent as income –tax on income comprised therein.*

Thus, when the percentage amount required to be deducted under the subsection as income-tax is on the sum credited to the account of or paid to a contractor in pursuance of a contract for carrying out a work or supplying labour for carrying out a work of any of the organisations specified therein, there is nothing in the sub-section on the basis of which it could be held that the contract to carry out a work or the contract to supply labour to carry out a work should be confined to 'works contract' as was argued on behalf of the assessee. There is no reason to curtail or to cut down the meaning of plain words used in the section. 'Any work' means any work and not a 'works contract' which has a special connotation in the tax law. Indeed, in the sub-section, the 'work' referred to therein expressly includes supply of labour to carry out a work. It is a clear indication of the Legislature that the 'work' in sub-section is not intended to be confined or restricted to works contract. 'Work' envisaged in section 194C(1), therefore, has a wide import and covers any work which one or the other of the organisation specified in the sub-section can get carried out through a contractor under a contract and further it includes obtaining by way of such organisations supply of labour

under a contract with a contractor for carrying out its work which should have fallen outside the 'work' but for its specific inclusion in the subsection."

5.2.In the matter of Waves Electronics P.Ltd.(supra)designing,assembling,supply and erection of switch boards,was held to be a work contract.We would also like to refer to the case of Skycell Communications Ltd.,wherein it was held that payment for technical services, in order to cover u/s.194J,should be a consideration for acquiring or using technical know-how simplicitor provided or made available by human element.There should be direct and live link between payment and receipt /use of technical services/information.If the payments made by the assessee are examined on the touchstone of above discussion it become clear that same would not fall u/s.194 J of the Act.In our opinion,all the contracts were work contracts and there was no live link between the payment and use of technical services.So,in our opinion order of FAA does not suffer from any legal infirmity.

5.3.Similarly,we find that assessee had not hired any vehicles.The services of contractors were hired for ferrying the members of staff.In our opinion,the FAA had rightly held that provisions of section 194-I were not applicable for the payments made by the assessee to various parties,as discussed in the earlier part of the order.

Considering the above and confirming the order of FAA,we dismiss Ground No.1,raised by the AO.

ITA.s/3167 & 3168/Mum/2014,463/Mum/2015 & 3930/Mum/2015,AY.s.2009-10, 2010-11,2011-12 & 2012-13 :

6.In these appeals the main issue is same i.e.,deduction of tax u/s.194 J and 194-I as against 194-C of the Act.The only difference is about amount involved or the parties involved who had carried out job work for the assessee for providing service to it. The AO had levied tax of Rs.3.37 crores and Rs.3.11 crores for AY.2009-10 and AY.2010-11 respectively.For AY. 2011-12,he had held assessee in default for short deduction of tax of Rs.72.7 lakhs,whereas for AY.2012-13 default of Rs.44.77 lakhs was determined.

7.Following our order for AY.2008-09,we decide the effective Ground of appeal for the for all the above mentioned AY.s.(i.e.2009-10 to 2012-13)against the AO.

As a result appeals filed by AO.s stand dismissed
फलतः निर्धारित अधिकारियों द्वारा दाखिल की गई अपीलें नामंजूर की जाती हैं।

Order pronounced in the open court on 11th October, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 11 अक्टूबर, 2017 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 11.10 .2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "A " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.

		Date	Initials	Initial
1.	Draft dictated on-dictation sheets attached/direct on PC			
2.	Draft placed before author			
3.	Draft proposed & placed before the Second Member			
4.	Draft discussed/approved by Second Member			
5.	Approved draft comes to the Sr.PS			
6.	Kept for pronouncement			
7.	Date on which the file goes to the Bench Clerk			
8.	Date on which file goes to the A.R. for signature of the Order			
9.	Date of dispatch of the Order			