

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'A' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No. 621/CHD/2016**  
Assessment Year : 2008-09

M/s GCS Computer Technology Vs. The JCIT, Patiala Range,  
Private Limited, SCO 152-153, Patiala  
Sector 9-C,  
Chandigarh

PAN No.AABCG3185G

(Appellant)

(Respondent)

Appellant by : Sh. Rakesh Cajla, Advocate  
Respondent by : Sh. K.S. Bains, Addl. CIT

Date of Hearing : 18.04.2018  
Date of Pronouncement: 18.04.2018

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 14.03.2016 of the Commissioner of Income Tax [hereinafter referred to as CIT(A)] Meerut (Camp at Patiala).

2. The sole issue raised is regarding disallowance of expenditure of Rs. 13,35,567/- made under the provisions of section 40(a) (ia) of the Income-tax Act, 1961 (in short 'the Act') on account of non-deduction of TDS.

3. At the outset, the Ld. Counsel for the assessee has invited our attention to the impugned order of the Assessing officer, wherein, the

assessee had pleaded before the Assessing officer that in fact the aforesaid payment was made by the assessee on account of reimbursement of expenditure incurred by All India PTU DEP Associates. It was submitted that the All India PTU DEP Associates (hereby referred as 'Association') was an Organization formed by all the regional centers of Punjab Technical University, Jalandhar. That these centers to promote their business and for generating awareness about distance learning course among the students, had to advertise about the services offered by them. That the said Association worked on behalf of all the centers collectively and did the advertisement and business promotion activities and incurred expenditure for the said purpose. However, the actual expenditure incurred was recovered on proportionate basis from the respective institutes. The Assessing officer, however, did not agree with the above contention of the assessee and held that the Association was a separate entity. That the assessee had made the payment to the Association for advertisement purposes and, hence, the assessee was liable to deduct TDS as per the provisions of section 194C and 194J of the act for non-compliance and, thus, disallowance of expenditure was attracted under the provisions of section 40(a)(ia) of the Act. He accordingly disallowed the aforesaid payment expenditure made by the assessee to the Association.

The Ld. CIT(A) also confirmed the disallowance so made by the Assessing officer.

4. Before us, Ld. Counsel for the assessee has reiterated the submissions made before the lower authorities. The Ld. DR, on the other hand, has relied on the certain clarifications issued by the CBDT wherein it has been mentioned that the provisions of section 194C and 194J of the Act refer to all the sums paid / incurred including re-imburement etc. The Ld. DR has also placed reliance on the decision of the Hon'ble Supreme Court in the case of Associated Cement Co Ltd Vs. (1993) 67 taxman 346 (SC) .

5. We have considered the rival submissions. The assessee in this case has pleaded that the payment in question was made to the Association towards its share of expenses incurred on advertisements on behalf on behalf of the institutes / regional centers. There is no denial or rebuttal to this fact by the Revenue. The only contention of the Revenue is that the assessee was a separate person and the assessee had made the payments for advertisements and, hence, the assessee was liable to deduct tax at source on the aforesaid payments. We are not in agreement with the above contention of the Revenue. As explained by the Ld. Counsel for the assessee, the institutes / regional centers instead of individually incurring expenditure on advertisements had opted to form an Association who would give the advertisements on behalf of the institutions. The Association, itself, was not engaged in the business or profession of advertisements rather it imparted work / contract to the advertisers on behalf of regional centers including of the association. In our view, the Association did not fall within the definition of contractor so as to attract the provisions of section 194C or 194J of the Act.

6 So far as the reliance of the Ld. DR on the judgement of Hon'ble Supreme court (supra) is concerned, a perusal of the same reveals that the question before the Hon'ble Supreme Court was as to whether the TDS has to be deducted by the assessee on the entire payment made to the contractor or on the income element only, However, neither this is the question involved in this case nor the findings arrived at by the Hon'ble Supreme Court are otherwise applicable to the facts and circumstances of this case in hand. In the case in hand, in our view, the Association is not a contractor rather it is just a mediator between the assessee and the advertisers. The Association has been created by the assessee and other regional institutes just to facilitate the work of advertisement for all though common platform. The payment was made by the association to the advertisers on behalf of the assessee. It is plea of the assessee that while making payment to the advertisers, the association had deducted TDS thereupon. The Ld. Counsel in this respect has relied upon a Certificate issue by the Association, wherein, it has been certified that the association was giving advertisements on behalf of the regional centers / institutes and that the share of cost of the advertisement was recovered from respective regional centers. In view of this, since the Association did not fall under the definition of Contractor, hence, the provisions of section 194C and 194J, in our view, would not attract in this case. However, there needs a verification at the level of the Assessing officer whether the Association had actually deducted the TDS while making payments to the advertisers on behalf of the assessee and other regional centres,

hence, we remand this case to the file of the Assessing officer for the limited purpose to verify whether the Association had deducted TDS on behalf of the assessee while making the further payments to the advertisers. If the above contention is found true, then, no disallowance should be made in this respect.

In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
Dated : 18.04.2018  
Rkk

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

*Copy to:*

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*