

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 4124/Mum/2016 (Assessment Year 2011-12)

Tata Teleservices (Maharashtra) Limited D-26, TTC Industrial Area MIDC, Sanpada, PO Turbhe Navi Mumbai-400073. PAN : AAACH1458C (Appellant)	Vs.	DCIT 7(3) Mumbai (Respondent)
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Assessee by	Shri Sanjay Chopra
Department by	Shri Ashish Kumar
Date of Hearing	7.05.2018
Date of Pronouncement	16.05.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 4.3.2016 passed by the learned CIT(A)-14, Mumbai and it relates to A.Y. 11-12. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of ₹ 62.78 lakhs, being telecommunication charges paid to France company for non-deduction of tax at source.

2. We heard the parties and perused the record. Shri Sanjay Chopra, Additional Vice-President (Taxation) of the company appeared on behalf of the assessee. He submitted that the impugned disallowance u/s 40(a)(i) has been made for non-deduction of tax at source from payment of Interconnect usage charges paid to other telecom operators. He submitted that the TDS officer had earlier treated the assessee as assessee-in-default u/s. 201(1) of the Act for non-deduction of tax at source for the very same assessment year on the very same payment. The assessee challenged the order so passed by the TDS officer by filing appeal before the learned CIT(A) and thereafter by filing appeal before the ITAT. The said appeal in ITA No. 2045/Mum/2014 has since been disposed of by the Coordinate Bench, vide its order dated 27.5.2016. He

submitted that the Tribunal, in the above said order, has taken the view that roaming/inter-connectivity charges paid by the assessee to other telecom companies is not in the nature of fee for technical services and hence will not attract provisions of section 194J of the Act.

3. Learned representative further submitted that the Coordinate Bench has followed the decision rendered by the Kolkata Bench of the Tribunal in the case of Vodafone East Ltd. (ITA No. 1864/Kol/2012 and others dated 15.9.2015) in this regard. Accordingly, the learned representative submitted that there is no requirement of deducting tax at source u/s. 194J of the Act on inter-connectively usage charges and consequently there is no requirement of making addition u/s 40(a)(i) of the Act. Accordingly he submitted that the learned CIT(A) was not justified in confirming disallowance made u/s 40(a)(i) of the Act.

4. Learned DR, on the contrary, supported the order passed by the learned CIT(A).

5. Having heard the rival contentions, we noticed that the issue of deduction of tax at source on interconnectivity usage charges has already been dealt with by the co-ordinate bench of Tribunal in the assessee's own case for very same assessment year while adjudicating the appeal filed by the assessee against the demand raised u/s. 201(1) of the I.T. Act. The coordinate Bench has followed the decision rendered by the Kolkata Bench of the Tribunal in the case of Vodafone East Ltd. (supra) and has held that interconnectivity charges paid by the assessee to other telecom operators are not in the nature of fees for technical services. For the sake of convenience, we extract below the operative portion of the order passed by the Coordinate Bench in ITA No. 2015/Mum/2014 (referred supra).

13. In the present case, undisputedly, the Assessing Officer has not obtained any report from the technical expert to ascertain the fact whether there is any human intervention in providing cellular services. It is patent and obvious that the Assessing Officer has relied upon the technical report obtained in case of Vodafone Essar Mobile Services Ltd.

Therefore, we are not in a position to know whether the facts relating to human intervention in assessee's case is similar to the facts in case of Vodafone Essar Mobile Services Ltd. However, after analysing the report submitted by the technical expert Shri Tanay Krishna, in case of Vodafone Essar Mobile Services Ltd., who incidentally also submitted the report in case of Bharti Cellular Ltd., and the cross-examination of Shri Tanay Krishna, the ITAT, Kolkata Bench, has found that the roaming/inter connectivity services are rendered automatically without any human intervention. It is evident from the order passed under sections 201(1) and 201(1A), that the Assessing Officer relying upon the technical report obtained in case of Vodafone Essar (Supra), has raised the demand against the assessee M/s. Tata Teleservices (Maharashtra) Limited inferring that roaming charges were in the nature of fees for technical services, hence, coming within the purview of section 194J. However, as stated earlier, the very same report from the technical expert in case of Vodafone Essar Mobile Services Ltd., was considered and analysed by the Tribunal, Kolkata Bench (supra) and the Bench held that there is no human intervention in providing the roaming services. That being the case, following the observations of the Tribunal, Kolkata Bench, referred to above, we hold that the roaming / inter- connectivity charges paid by the assessee to other telecom networks not being in the nature of fees for technical services will not attract the provisions of section 194J. That being the case, assessee was not required to deduct tax at source on payment of roaming charges in terms of section 194J. In view of the aforesaid, we quash the demand raised under sections 201(1) and 201(1A).

Since the coordinate Bench has already held that provisions of section 194J will not be applicable to inter-connectivity usage charges paid by the assessee, the provisions of section 40(a)(i) of the Act invoked by the Assessing Officer is also not applicable to the impugned payment. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the impugned addition.

6. In the result, appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 16.05.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/05/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

Senior Private Secretary
ITAT, Mumbai

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