

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No:- 2951/Del/2016,
(Assessment Year: 2010-11)**

HLL Life Care Ltd., B-14A, Sector-62, Noida, UP-201307.	Vs.	Asst. Commissioner of Income-tax, (TDS), Noida.
PAN No: AAACH5598K		
APPELLANT		RESPONDENT

**ITA No:- 2952/Del/2016,
(Assessment Year: 2011-12)**

HLL Life Care Ltd., B-14A, Sector-62, Noida,UP-201307.	Vs.	Dy. Commissioner of Income-tax, (TDS), Noida.
PAN No: AAACH5598K		
APPELLANT		RESPONDENT

Assessee by : Sh. Ravi Bhatia, CA
Revenue by : Sh. B.R. Mishra, Sr. DR

Date of Hearing : 24.05.2018.
Date of Pronouncement : 19/06/2018.

ORDER

PER: KULDIP SINGH, JM

Since common questions of facts and law have been raised in both the aforesaid inter connected appeals, the same are being disposed of by way of consolidated order to avoid repetition of discussion.

2. The appellant, HLL Life Care Ltd., B-14A, Sector-62, Noida, (hereinafter referred to as 'the Assessee') by filing the present appeals, sought to set aside the impugned orders dated 21/03/2016 qua Assessment Years 2010-11 & 2011-12 respectively passed by Ld. CIT(A)-1, on the grounds that:-

Assessment Year 2010-11

1. *That the orders dated 21.03.2016 passed by the Commissioner of Income Tax (Appeals) -1, Noida and the orders dated 21.03.2014 passed by the Asst. Commissioner of Income Tax (TDS), against the Assessee Company are both bad in law and against the facts of the case.*
2. *That the Ld. CIT (Appeals)-I, Noida has greatly erred in law and on the facts of the case –*
 - a) *In rejecting the appeal of the Appellant Company when the complete facts and details were duly explained to him in writing during the course of various submissions made from time to time;*
 - b) *In not appreciating the correct legal position of the case and not even discussing any case law which had been quoted before him from time to time and not looking into the orders of his predecessor passed on 04.10.2013 for the Assessment Years 2008-09 and 2009-10 whereby the stand of the Appellant Company was duly accepted by the then CIT(A) on the same circumstances;*

c) In rejecting the appeal on flimsy grounds by just mentioning that provisions of Section 194-I are applicable and not 194-C whereas the Appellant Company has duly filed the complete details with the copy of Contracts, TDS Returns with name of parties before the CIT(A) during the course of various hearings and not even bothering to mention any such details in his Appellate Order;

d) In wrongly mentioning that he has considered the rival submissions of the parties to the dispute when at No stage of time the AO was either called during the course of hearing or his comments were called to our various submissions.

e) In wrongly rejecting the appeal just for the sake of rejecting the same without giving any details and not passing any speaking order in this respect when the previous history of the case and the case laws quoted were all in support of the Assessee Company.

3. That the Ld. ACIT(TDS) had greatly erred in law and on facts of the case-

i) in creating a demand of Rs. 7,83,754/- against the Assessee Company for failure to deduct TDS at appropriate rates on Car Hire Charges, whereas the Assessee Company had deducted the TDS at the correct rate, applicable in the case of Contracts for Car Hire, under Section 194C.

ii) in not appreciating the legal position in respect of Car Hire Charges and creating this huge demand just for the sake of creating demand,

iii) in not appreciating the correct position of facts and law when the Assessee Company furnished copies of Contracts and submitted that they had deducted TDS at correct rates applicable in respect of Contracts u/s 194C pertaining to Car Hire.

4. That the orders passed by the CIT(A), Noida as well as ACIT, TDS, Noida are both unjust, arbitrary, illegal and outside the scope of natural justice and have been framed in haste and in utter disregard of all the cases and norms of natural justice when the Assessee Company had deducted the TDS correctly and properly.

5. That the Appellant seeks permission to put forth detailed arguments on facts of the case and law at the time of hearing and further to add/delete/amend any grounds of appeal at the time of hearing of

the case.”

Assessment Year 2011-12

1. *That the orders dated 21.03.2016 passed by the Commissioner of Income Tax (Appeals) -1, Noida and the orders dated 21.03.2014 passed by the Asst. Commissioner of Income Tax (TDS), against the Assessee Company are both bad in law and against the facts of the case.*
2. *That the Ld. CIT (Appeals)-I, Noida has greatly erred in law and on the facts of the case –*
 - b) *In rejecting the appeal of the Appellant Company when the complete facts and details were duly explained to him in writing during the course of various submissions made from time to time;*
 - b) *In not appreciating the correct legal position of the case and not even discussing any case law which had been quoted before him from time to time and not looking into the orders of his predecessor passed on 04.10.2013 for the Assessment Years 2008-09 and 2009-10 whereby the stand of the Appellant Company was duly accepted by the then CIT(A) on the same circumstances;*
 - c) *In rejecting the appeal on flimsy grounds by just mentioning that provisions of Section 194-I are applicable and not 194-C whereas the Appellant Company has duly filed the complete details with the copy of Contracts, TDS Returns with name of parties before the CIT(A) during the course of various hearings and not even bothering to mention any such details in his Appellate Order;*
 - d) *In wrongly mentioning that he has considered the rival submissions of the parties to the dispute when at No stage of time the AO was either called during the course of hearing or his comments were called to our various submissions.*
 - e) *In wrongly rejecting the appeal just for the sake of rejecting the same without giving any details and not passing any speaking order in this respect when the previous history of the case and the case laws quoted were all in support of the Assessee Company.*

3. *That the Ld. DCIT(TDS) had greatly erred in law and on facts of the case-*
 - i) *in creating a demand of Rs. 1,28,470/- against the Assessee Company for failure to deduct TDS at appropriate rates on Car Hire Charges, whereas the Assessee Company had deducted the TDS at the correct rate, applicable in the case of Contracts for Car Hire, under Section 194C.*
 - ii) *in not appreciating the legal position in respect of Car Hire Charges and creating this huge demand just for the sake of creating demand,*
 - iii) *in not appreciating the correct position of facts and law when the Assessee Company furnished copies of Contracts and submitted that they had deducted TDS at correct rates applicable in respect of Contracts u/s 194C pertaining to Car Hire.*
4. *That the orders passed by the CIT(A), Noida as well as ACIT, TDS, Noida are both unjust, arbitrary, illegal and outside the scope of natural justice and have been framed in haste and in utter disregard of all the cases and norms of natural justice when the Assessee Company had deducted the TDS correctly and properly.*
5. *That the Appellant seeks permission to put forth detailed arguments on facts of the case and law at the time of hearing and further to add/delete/amend any grounds of appeal at the time of hearing of the case."*

3. Briefly stated the facts necessary for adjudication of the controversy at hand are: The assessee is into the business of manufacturing of Male and Female contraceptives. During the course of survey proceedings, AO noticed that assessee had hired taxis from different travelers and while making payment of hire charges to the said taxi operators, they have deducted tax U/s 194-C of the Income-tax Act (for short 'the Act') whereas w.e.f. 1/06/2007 to September, 2009 tax was required to be deducted at 10%+surcharge. AO taken the view that u/s 43 of the Act,

which defines 'Plant' includes vehicles also which are covered u/s 194-I of the Act and not U/s 194C and thereby made addition of Rs. 7,83,754/-.

4. The assessee carried the matter before the Ld. CIT(A) by filing the appeals for AYs 2010-11 & 2011-12 which have been dismissed by Ld. CIT(A) by passing composite orders.

5. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and order passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, assessee during the course of its business hired taxies from different taxi operators and while making payment of hire charges to them deducted tax U/s 194C of the Act. It is also not in dispute that the AO as well as Ld. CIT(A) has merely made/confirmed the addition on the ground that U/s 43 of the Act vehicles also falls under the definition of 'Plant' and as such TDS is required to be deducted U/s 194-I of the Act.

7. In the back drop of the aforesaid facts and circumstances of the case, order passed by the lower revenue authorities below and argument addressed by the Ld. Authorized Representatives of the parties to the appeal, the sole question arises for determination in the case is:-

" As to whether hiring of taxi by the assessee in order to make payment of hire charges thereof the assessee is required to deduct the TDS U/s 194-I as has been held by AO/CIT(A) or U/s 194C as has been deducted by the AO."

8. Identical issue has been decided by the Co-ordinate Bench of Tribunal in case cited as in the case of **Bharat Electronics Ltd. vs. Deputy Commissioner of Income Tax (TDS) in ITA Nos. 4749 & 4750/Del/2010 vide order dated 4th November, 2011** in favour of the assessee by returning the following findings:-

" The assessee did not take possession of the buses. They remained with the transporters. The buses are to be kept in good conditions by the transporters. The transporters would provide the drivers and the conductor on the buses. The buses would run for fixed number of hours. Thus, it indicates that the hiring of the buses would not be akin to taking of nay plant and machinery on lease. Therefore, following our order in the case of NTPC as well as in the case of Accenture Services (P) Ltd., the assessee would be liable to deduct the tax on such payment under sec. 194C of the Act and not under s. 194-I. ACIT vs. Accenture Services (P) Ltd. 44 SOT 290; ACIT vs. NTPC Ltd, Gautambudh Nagar (UP), followed."

9. Since there is no dispute that the taxies were hired by assessee during the course of its business and has never taken possession thereof and the taxi's operator remained custodian of taxies during the course of their operations and have been operated by drivers of the taxi's operators and the assessee has merely made payment of hire charges in accordance with the use of the taxies, the assessee has rightly deducted the TDS us 194C. In these circumstances hired taxies cannot be treated as 'Plant' in the possession of the assessee for the purpose of its business. So, by

following the decision rendered by Co-ordinate Bench of Tribunal in the case of Bharat Electronics Ltd.(supra), we are of the considered view that the addition of Rs. 7,83,754/-, made/confirmed by Ld. AO/CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted, consequently both the appeals filed by the Assessee stand allowed.

Order pronounced in the open court on 19/6/2018

Sd/-

(G.D. AGRAWAL)
PRESIDENT

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 19.06.2018
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	15/6/2018
Date on which the typed draft is placed before the dictating Member	18/6/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	