

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

(Before Sri J. Sudhakar Reddy, Accountant Member & Smt. Madhumita Roy, Judicial Member)

ITA No. 1463/Kol/2016
Assessment Year: 2001-02

&

ITA No. 1464/Kol/2016
Assessment Year: 2002-03

Laurel Securities Pvt. Ltd.....Appellant
313, Todi Chambers
2, Lal Bazar Street
Kolkata - 700 001
[PAN: AAACL 4545 JJ]

Income Tax Officer, Ward-58(3), TDS, Kolkata.....Respondent

Appearances by:

Shri Yashvardhan Baid, A/R, appeared on behalf of the assessee.

Shri Saurabh Kumar, Addl. CIT, Sr. D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : September 11th, 2018

Date of pronouncing the order : September 14th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

Both these appeals are filed by the assessee directed against the common order of the Learned Commissioner of Income Tax (Appeals)-24, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 15/04/2016, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Years 2000-01 & 2001-02, wherein, he confirmed the order passed by the Assessing Officer u/s 201(1)/201(1A) r.w.s. 194J of the Act.

2. The assessee during the year, had made payments to Nations Stock Exchange of India (NSE) of Rs.1,50,000/-, towards VSAT Charges and had made a further payment of Rs.2,15,921/- to M/s. East India Securities Ltd., towards Demat handling charges. The Assessing Officer after considering the submissions of the assessee held that the assessee was liable to deduct tax at source u/s 194J of the Act, on VSAT Charges amounting to Rs.1,50,000/- and on account of Demat handling charges of Rs.2,15,921/-. As these are fee for technical services which attracts Section 194J of the Act. As no deduction had been made u/s 194J of the Act, the assessee was

treated as an assessee in default u/s u/s 201(1) of the Act and interest is charged 201(1A) of the Act.

On appeal the Id. First Appellate Authority observed that, the Assessing Officer has recorded that no arguments were made by the assessee in support of his claim that the payments in question do not fall u/s 194J of the Act. On Demat handling charges, he held that the agreement between the assessee and the depository participant demonstrate that the nature of services were management of inward and outward delivery of securities. The issue of applicability of Section 194J of the Act to VSAT charges was held in favour of the assessee. As regards payment of Demat Charges, he decided the issue against the assessee.

3. Aggrieved the assessee is in appeal before us.

4. The Id. Counsel for the assessee produced a number of documents and made an attempt to demonstrate that:-

- a) The charges in question are paid for use of standard facility.
- b) That there is no human intervention in the said services and hence Section 194J of the Act does not apply as held by the Hon'ble Supreme Court in the case of *CIT vs. Bharti Cellular Ltd., 330 ITR 239 SC.*

4.1. The Id. D/R, submitted that the assessee could not demonstrate that there is no human intervention whatsoever in the depository services obtained by the assessee.

5. After hearing rival contentions, we are of the considered opinion that the claims of the assessee require deeper investigation. No doubt, the assessee's case cannot be compared with charges paid for interport communications between cellular companies. The agreement entered into by the assessee with M/s. East India Securities Ltd. has to be examined and the rights and responsibilities of the parties listed out have to be examined. The Assessing Officer may summon the persons who operate depository services, so that the functions and the *modus operandi* is brought out clearly. Without such factual clarity, it would not be possible to adjudicate as to whether the payment charges would fall within the ken of Section 194J of the Act.

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Hence, we direct the Assessing Officer to examine the functions of the depository service and determine as to whether Section 194J of the Act, applies or not.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Kolkata, the 14th day of September, 2018.

Sd/-
[Madhumita Roy]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 12.09.2018
{SC SPS}

Copy of the order forwarded to:

- 1. Laurel Securities Pvt. Ltd**
313, Todi Chambers
2, Lal Bazar Street
Kolkata - 700 001
- 2. Income Tax Officer, Ward-58(3), TDS, Kolkata**
3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches