

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 406/RJT/2015
(Assessment Years: 2013-14)**

DCIT, Circle TDS, Rajkot	V/S	Indian Oil Corporation Ltd., (WRPL), Morbi Road, Rajkot
(Appellant)		PAN No. AAACI1681G (Respondent)

**Appellant by : Shri S. S. Rathi, Sr. D.R.
Respondent by : Shri D. M. Rindani, A.R.**

(आदेश)/ORDER

Date of hearing : 10 -08-2021
Date of Pronouncement : 27-08-2021

PER MAHAVIR PRASAD, J.M.

1. This appeal has been filed by the Revenue is directed against the order of the Commissioner of Income Tax (hereinafter called CIT(A)) order no. CIT(A)-I/Rjt/0239/2014-15 order dated 30/06/2015 arising out of assessment order dated 02.03.2014. Revenue has taken following grounds of appeal:

- 1. The Ld. CIT(A) has erred in law as well as facts of the case in holding that since the assessee has deducted tax at source and deposited the tax into the Govt. account in subsequent year on the amount of provisions made as on 31-03-2013, it should not to be treated as assessee in default for non deduction of tax at source under section 194C of the I. T. Act on provisions of expenses of underwater charges at Rs. 37,74,70,209/- made on 31-03-2013*
- 2. The Ld. CIT(A) has erred in law as well as facts of the case in holding that tax is required to be deducted at source u/s 194C of the I. T. Act on payment of pest control charges and the same is not professional services and therefore tax is not deductible u/s 194J of the I. T. Act.*
- 3. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the A.O. passed u/s 201(1).*
- 4. It is, therefore, prayed that the order of the Ld. CIT(A) may be cancelled and that of the Assessing Officer may be restored to the above effect.*
- 5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. In this case, the assessee is a division of Indian Oil Corporation Ltd. and engaged in the business of managing oil pipeline laid between Salaya-mathura-Panipat.
3. During the course of survey, it is found that assessee has not deducted tax at source for the payment made to the pest control services. The Ld. A.O. passed order u/s. 201(1)/201(1A) of the Act holding that assessee is in default for non-deduction of tax at source on provisioning amount and also on sums paid to pest control service and for non-deduction of TDS u/s 194C. The Ld. A.O. made total addition of Rs. 97,17,103/-.
4. Against the order of the Ld. A.O., assessee preferred first statutory appeal before the Ld. CIT(A) who partly allowed appeal of the assessee.
5. We have heard both the parties on behalf of the assessee stated that actual tax have been paid by the assessee and interest portion has been settled under Vivad Se Vishwas Scheme and payment details have been given in paper book page no. 18 &

19 and therefore nothing survive against the assessee. Now issue before us is whether assessee is liable to deduct TDS u/s. 194C or u/s. 194J.

6. Section 194C contemplate:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor⁸⁵) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

7. The Patna High Court in case of Pest Control India Ltd. vs. Union of India and Others, reported in 75 STC 188 Patna, examined a question very similar to one on hand before us. The Division Bench in the context of pest control service rendered by the assessee held that in execution of such a contract, the chemicals are sprayed through machines so that when the process ends: the chemicals were consumed and nothing tangible remained in which the property is transferred. Such a transaction does not involve transfer of any goods as understood in sub-clause (b) of clause (29-A) of Article 366. Such a contract is a pure service contract and no sales tax is leviable.

8. Assessee deducted tax under section 194C in our consideration opinion Pest Control Services are covered under section 194C.
9. On the other hand, Ld. D.R. has relied on the order of the Assessing Officer.
10. In the result, appeal filed by the Revenue is dismissed and we hold that Ld. CIT(A) has passed detailed and reasoned order and same does not require any kind of interference at our end.

Order pronounced in Open Court on 27 - 08- 2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 27/08/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Rajkot