

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI SAKTIJIT DEY (JUDICIAL MEMBER)**

**ITA No. 932/MUM/2019
Assessment Year: 2013-14**

&

**ITA No. 933/MUM/2019
Assessment Year: 2014-15**

&

**ITA No. 934/MUM/2019
Assessment Year: 2015-16**

&

**ITA No. 935/MUM/2019
Assessment Year: 2016-17**

Sodexo SVC India Pvt. Ltd.,
503 & 504, 5th floor, B Wing
Hiranandani Fulcrum, Sahar Road,
Andheri East,
Mumbai-400 099.

PAN No. AALCS 9822 Q

Appellant

Vs. Assistant/Deputy Commissioner
of Income Tax (TDS)-2(2),
717, Smt. K.G. Mittal Ayurvedic
Hospital Bldg., Charni Road, (W),
Mumbai-400 002.

Respondent

Assessee by : Mr. PB Andhyarujina, AR
Revenue by : Mr. Sunil Umap, DR

Date of Hearing : 17/09/2021
Date of pronouncement : 15/12/2021

ORDER

PER SAKTIJIT DEY, JM.

Captioned appeals by the same assessee arise out of four separate orders of learned Commissioner of Income Tax (Appeals)-60, Mumbai for the assessment years 2013-14, 2014-15, 2015-16 and 2016-17.

2. At the outset, we must observe, these appeals were earlier disposed of by a common order dated 07.10.2019. However, while deciding the miscellaneous applications filed by the assessee, the order was recalled for fresh hearing of the appeals. This is how the appeals came up for hearing before this Bench.

3. The controversy in the present set of appeals is confined to applicability of section 194C to certain payments made by the assessee to its affiliates.

4. Relevant material facts for disposal of the present appeals are, the assessee, a resident company, is stated to be engaged in the business of issuing meal vouchers to its clients/customers through which certain benefits in kind is provided by the clients to their employees. The employees of the clients/customers use these meal vouchers at specified places, such as, restaurants, eating places, caterers, super markets, etc., who are affiliates of the assessee for accepting the meal vouchers as payments towards purchase of food items or non alcoholic beverages. To verify tax deduction at source (TDS) compliance of the assessee, a survey under section 133(2A) of the Act was conducted at the business premises of the assessee on 21/01/2016. In course of such survey action, the assessing officer noticed that while the assessee had deducted tax at source on certain payments made to one category of affiliates, i.e. caterers; however, it has not deducted tax at source on payments made to other affiliates, such as, restaurants, super markets and food establishments. Noticing this, the assessing officer issued a show cause notice to the assessee to explain why it should not be treated as an assessee in default in terms of section 201(1) for failure to deduct tax at source.

5. In response to the show cause notice issued, the assessee furnished necessary details with an exhaustive submission explaining the reason for not deducting tax at source. The primary contention of the assessee was, in terms of approval granted by the Reserve Bank of India (RBI) under the Payment and Settlement Systems Act, 2007 (in short, "PSS Act"), the assessee is operating a payment system for issuance of meal vouchers, wherein, the only role played by it is to provide an alternative system of payment. It was submitted, since the payment made by the assessee to the affiliates is merely reimbursement for the prepaid vouchers under the alternative system of payment, it is not exigible to TDS provisions. Explaining further, it was submitted that assessee is not making any payment to the affiliates, but actually payment is made by employees of the clients through prepaid instruments issued by the assessee and the assessee is merely reimbursing the face value of the vouchers. It was further submitted, since the affiliates are neither doing any work nor are providing any labour/services to the assessee, the provisions of section 194C would not be applicable.

6. The assessing officer, however, was not convinced with the submissions of the assessee. The assessing officer observed, certain corporate/firms enter into agreement with the assessee for buying meal vouchers for use of their employees. He observed, on the payment made to the assessee towards purchase of vouchers, the clients are deducting tax at source under section 194C of the Act. However, when making payment to the affiliates, the assessee is not deducting any tax at source, though, it has entered into similar type of agreement with the affiliates. He observed, while the assessee is deducting tax at source on payment made to caterers; however, it is not doing so in respect

of payment made to restaurants and super markets by taking the plea that the payments are in the nature of reimbursement. He observed, the end-users of the meal vouchers, i.e. the employees of the clients of the assessee are not connected to the assessee. Therefore, affiliates are acting as agents of the assessee while honouring the meal vouchers as per the agreement between the assessee and its clients. On verifying the terms of the agreement, the assessing officer observed that the affiliates have to do specific work before claiming reimbursement from the assessee. The works to be performed are as under:-

- 1. Examining the security features of the sodexo vouchers*
- 2. Cancellation of vouchers with specific stamp after supplying food & other articles in lieu of meal vouchers*
- 3. All valid vouchers shall be kept in reimbursement envelope and after duly filling up reimbursement form supplied by M/s Sodexo*
- 4. All valid vouchers shall be delivered by the AE as per their reimbursement Calendar supplied by M/s Sodexo*
- 5. Reimbursement claims shall be delivered at designated collection centers of M/s Sodexo*
- 6. For every reimbursement envelope M/s Sodexo will charge delivery fee from the affiliates*
- 7. Vouchers delivered by Affiliates shall be scrutinized by M/s Sodexo and amount determined by Sodexo shall be conclusive and final.*
- 8. In the event of any difference in amount paid by M/s Sodexo and claim made by affiliates, the amount determined by Sodexo is final and same shall be acceptable by Affiliate as reimbursement value payable by Sodexo.*
- 9. Amount determined by Sodexo shall be payable to affiliate through account payee cheque or any other mode of bank payment as mutually agreed between them.*

7. Thus, according to the assessing officer, the payment made by the assessee to affiliates are for carrying out work as envisaged under section 194C of the Act. While coming to such conclusion, the assessing officer also

held that the transaction between the assessee and affiliates are not in the nature of contract for sale of goods. This is for the reason that ownership or title of the goods are not given either to assessee or its clients. Rather, ownership/title over the goods are getting transferred to the employees of the corporate with whom neither assessee nor its affiliates are having contract. In this context, he referred to circular no.684 dated 08/03/1994 issued by the Central Board of Direct Taxes (CBDT). Thus, ultimately, the assessing officer held that since payments made to the affiliates are for carrying out work as provided under section 194C of the Act, the assessee was required to deduct tax at source. Alleging that the assessee had failed to deduct tax at source in terms of section 194C, the assessing officer passed orders under section 201(1)/201(1A) in all the years under consideration. Assessee challenged the orders passed under section 201(1)/201(1A) before the first appellate authority without any success.

8. Explaining the business model of the assessee, learned counsel appearing for the assessee submitted, the assessee operates a semi closed prepaid payment system within the framework set out under the PSS Act. He submitted, as per the RBI guidelines issued in respect of prepaid payment instruments in India, the assessee issues meal vouchers which can be utilized for the purchase of food and non alcoholic beverages at the outlets of assessee's affiliates. He submitted, the affiliates are persons/entities, who own and operate shops like restaurants and super markets, etc. and who enter into agreement with the assessee to honour the vouchers issued by it. Proceeding further, he submitted, the assessee enters into contracts with customers to provide the customers with vouchers that can be used at the

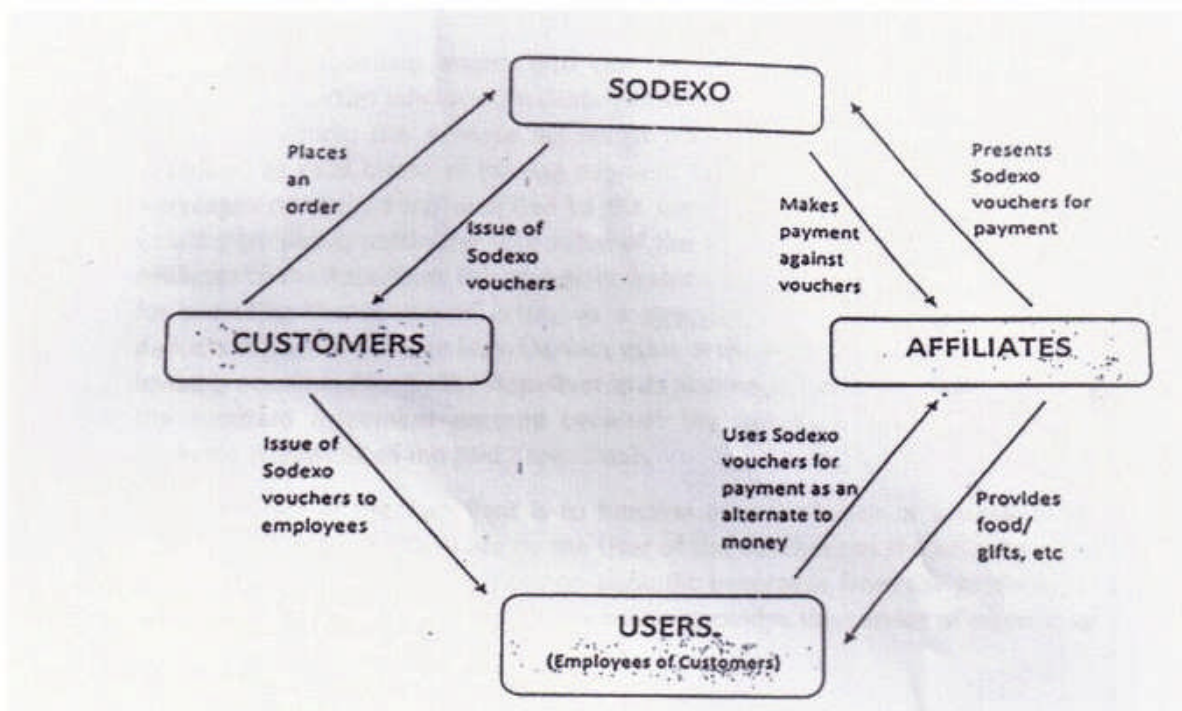
shops of the affiliates of the assessee. He submitted, the meal vouchers can be used by the employees of the customers/clients only for purchasing food and non alcoholic beverages from the outlets of the affiliates. He submitted, while issuing meal vouchers to customers/clients, the assessee receives the face value of the voucher alongwith service charge for providing the voucher. He submitted, the face value of the vouchers issued to the customers is to be exclusively used to settle/reimburse the face value of the vouchers when they are presented to the affiliates. He submitted, the face value of the vouchers received from clients/customers, as per RBI guidelines has to be kept in an escrow account for onward payment to the affiliates on settlement of the meal vouchers. Thus, he submitted, the face value of the vouchers kept in the escrow account do not represent the income of the assessee, but is a liability to be discharged to the affiliates who have accepted the meal vouchers as payment made towards the user of the vouchers for purchase of food or non alcoholic beverages. He submitted, since, the face value of the voucher is a liability to be discharged to the affiliates, it was not routed through the profit and loss account but was shown in the balance-sheet as a liability. He submitted, the service charges received by the assessee from the customers for issuance of meal vouchers is shown as income and offered to tax. Similarly, the service charges received from affiliates for providing the service of acting as a payment medium/facilitator, the assessee deducts the service charge from face value of the vouchers and recognizes it as income and offers to tax. Thus, he submitted, the assessee functions merely as a facilitator or a medium for enabling payments to be made by the user of the vouchers to the affiliates when the user purchases food and non alcoholic beverages from the affiliates.

He submitted, in assessee's own case Supreme Court has held that the assessee is only a facilitator and medium between the affiliates and the customers and the essential character of the transaction was a provision of service by the assessee which was achieved through the voucher. It was the affiliates that received money for goods and not the assessee. Assessee receives service charges only for the services rendered both to the customers as well as to the affiliates. Drawing our attention to section 194C of the Act, he submitted that the affiliates do not carry out any work for the assessee and are neither contractors of the assessee. Thus, he submitted, the provisions of section 194C of the Act are inapplicable. As regards the allegation of the revenue that similar payment made to caterers were subjected to TDS, learned counsel submitted, the assessee, as a matter of abundant caution has deducted tax on payment made to caterers, since, catering is included in the definition of "work" in the Explanation to section 194C of the Act. Without prejudice, he submitted, even as per CBDT circular no.715, TDS is not required to be made when payment is made for serving food in a restaurant in the normal course of running of the restaurant/café. Thus, he submitted, the demand raised under section 201(1) and 201(1A) has to be struck down.

9. Strongly relying upon the observations of the assessing officer and learned CIT(A), the learned departmental representative submitted, the agreement between the assessee and the affiliates is not merely a contract for payment but also involves work element. He submitted, as per the instruction of the assessee, the affiliates are honouring the meal vouchers and receiving the payment from the assessee. Therefore, they are not only acting as agent of the assessee but are performing certain work on behalf of the assessee.

Therefore, the assessee was required to deduct tax under section 194C of the Act.

10. We have carefully considered the rival submissions and perused the material on record. The factual matrix reveals that the assessee is operating a semi-closed prepaid payment system being authorized by RBI in terms of section 7 of the Payment and Settlement System Act, 2017. Under the aforesaid scheme, the assessee issues printed paper vouchers to be utilized for purchase of food and non-alcoholic beverages at certain specified establishments. For better appreciation, a diagrammatic representation of assessee's business model is depicted below :



11. As could be seen from the above, the client/customer approaches the assessee for purchase of paper printed meal vouchers having a certain face

value. After receiving the consideration for the face value along with certain service charges, the assessee issues the meal vouchers to the customers. The customers, in turn, provide these vouchers to their employees as perquisite. The employees use the vouchers to obtain/pay for food, meal and non-alcoholic beverages at certain establishments known as affiliates running network of restaurants, super markets etc. The assessee enters into agreement with the affiliates, in terms of which, after receiving the meal vouchers towards the value of food/beverages purchased by the employees, the affiliates submit the vouchers to the assessee for redemption and the assessee reimburses the face value of the vouchers after deducting some amount towards service charges. It is an accepted factual position that the service charge received by the assessee, both, from the customers as well as affiliates is offered as income. So far as the face value of the meal voucher is concerned, as per clause 8 of RBI Master Circular placed in the paper book, the amount received from the customers towards issuance of meal vouchers has to be kept in escrow account maintained with any Scheduled Commercial Bank. The Master circular mandates that the amount so deposited in the escrow account can only be used for making payment towards reimbursement of the face value of the meal voucher to the affiliates. The Government Regulations make it clear that the face value of the meal vouchers cannot be used by the assessee for any other purpose. Thus, it is very much clear that the amount received by the assessee from customers for providing the meal vouchers is not an income of the assessee but has to be used only for the purpose of making payment to the affiliates towards redemption value of vouchers. The entire scheme relating to issuance of printed meal vouchers

read with PSS Act and RBI Master Circular make it clear that the assessee is merely a facilitator or a medium for enabling payments to be made by the user of the vouchers to the affiliates when the user purchases food and non-alcoholic beverage from the affiliates. In other words, the assessee is merely providing the service of an alternative mode of making payment.

12. In this context, it is relevant to refer to the decision of the Hon'ble Supreme Court in assessee's own case i.e. Solexo SVC Pvt. Ltd. vs State of Maharashtra [2016] 331 ELT 23. Though, the aforesaid decision was rendered in the context of levy of octroi by treating the meal vouchers as goods, however, certain observations of the Hon'ble Supreme Court regarding business model of the assessee would be very much relevant for deciding the issue at hand. After analyzing the business model of the assessee, the Hon'ble Supreme Court has observed that the assessee had made arrangements with affiliates for supply of goods against vouchers to simply help the customers by facilitating the provision for making available food items etc. of a particular amount represented by the vouchers to the employees of the customers. The Hon'ble Court observed, though, the vouchers bear a particular value and for such value goods are provided to the employees, however, the goods are not provided by the assessee but by the affiliates. The assessee is only a facilitator and medium between the affiliate and customer and is merely providing some services. The Hon'ble Court observed, the intrinsic and essential character of the entire transaction is to provide services by the assessee and this is achieved through the means of the vouchers. The goods belong to affiliates which are sold by them to customer's employees on the basis of vouchers given by the customer to its employees. It is the affiliates, who are getting

money for goods and not the assessee who only gets service charges for the services rendered both to the customers as well as the affiliates.

13. Thus, from the aforesaid observations of the Hon'ble Supreme court, it is very much clear that rather than the assessee availing certain services or getting some work done through affiliates, it is the affiliates who are availing certain services from the assessee for which service charge is paid to the assessee. While analyzing the business model of the assessee, the Hon'ble Court also took note of the fact that the assessee cannot trade or sale the vouchers separately. Ultimately, the Hon'ble Court observed that the meal vouchers for purchase of food/non-alcoholic beverages provided by an employer to employee is treated as expenditure incurred by the employer and amenity at the hands of the employee. It is the customers of the assessee who provide this perquisite to its employees by adopting the methodology of vouchers and for which services of the appellant is availed. Thus, essentially, while acting as a facilitator/medium between the end user of the vouchers and the affiliates, the assessee is providing services both to the customers as well as affiliates for which it received service charges from both the parties. The payment of face value of the vouchers to the affiliates after withdrawing from the escrow account is never an income of the assessee. Rather, it is a liability of the assessee which has to be discharged in terms of the PSS Act and Master Circular issued by the RBI. Therefore, the amount received from the customers towards issuance of meal vouchers cannot be treated as income of the assessee, except, to the extent of service charges received thereon. For this reason, alone, the face value of the meal vouchers are not routed through the profit and loss account and is shown as liability in the balance sheet. It is a fact

on record that both the Assessing Officer and learned CIT(A) have held that the payment made by the assessee towards reimbursement of meal voucher is for work performed by the affiliates, hence, comes within the ambit of section 194C of the Act. At this stage, it is relevant to look into the provisions of section 194C of the Act. A reading of the aforesaid provision as a whole, makes it clear that payment made to contractors for carrying out any work including supply of labour has to be subjected to deduction of tax at source. The definition of work under clause 4 of Explanation to section 194C is as under :

(iv) "work" shall include-

- (a) advertising;*
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting,*
- (c) carriage of goods or passengers by any mode of transport other than by railways;*
- (d) catering;*
- (e) ⁴⁴ (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A,] but does not include manufacturing or supplying product according to the requirement or specification of a customer by using material purchased from a person, other than such customer for associate of such customer].]*

14. On a careful reading of the provision it becomes very much clear that except one of the categories i.e. catering, the payment of the face value of meal vouchers to affiliates would not come within the definition of work either as per the general meaning or even under the extended meaning of work as per section 194C of the Act. In so far as catering is concerned, the admitted factual position is, the assessee has deducted tax on the payment made to caterers, who basically are in house facilities established by customers of the

assessee. Thus, under no circumstances, the payment made by the assessee towards face value of the meal vouchers to the affiliates can come within the ambit of section 194C of the Act. In any case of the matter, as per the scheme of PSS Act and Master Circular issued by the RBI, the amount received towards face value of the meal vouchers is not money belonging to the assessee and has to be used exclusively for the purpose of making payment to the affiliates. There is nothing on record to suggest that the regulatory authorities have found any violation of conditions of PSS Act, 2007 or the RBI guidelines by the assessee while carrying out the business. Thus, the assessee is merely a custodian of the money and for facilitating the provision of making available food and beverages to the employees of customers through the affiliates, the assessee is merely a service provider. Because of the service provided by the assessee, both, the affiliates and employees are benefited. For this process of facilitation which is in the nature of service, the assessee receives service charges both from its customers as well as affiliates. Thus as could be seen from the facts on record, rather than the assessee availing services from the affiliates, it is the affiliates who avail services of the assessee for growth of their business. Thus, considered in the aforesaid perspective, in our view, the payment made by the assessee towards face value of the meal vouchers to the affiliates are not in the nature of payment made towards works contract so as to fall within the provision of section 194C of the Act. For the sake of completeness, we must observe, on careful examination, we have found that the decision in case of Bovis Lend Lease (I) P Ltd vs ITO 127 TTJ 25 (Bang – Trib) has been rendered in completely different set of facts and circumstances, hence, would not apply to present assessee's case. In the

aforesaid view of the matter, we hold that the assessee was under no obligation to deduct tax at source under section 194C of the Act on the payment made to the affiliates.

15. Resultantly, demand raised under section 201(1) and 201(1A) are deleted. The grounds raised by the assessee are allowed.

16. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 15/12/2021.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai;
Dated: 15/12/2021
Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,
(Dy./Assistant Registrar)
ITAT, Mumbai