

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA Nos. 49 & 50/Rjt/2021  
Assessment Year 2014-15 & 2015-16**

Friends Salt Works & Allied Industry, Gandhidham PAN: AAAFF2067N (Appellant)	Vs	Dy. CIT, TDS Circle, Rajkot (Respondent)
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**Assessee by: Shri K.C. Thacker, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 14-03-2023  
Date of pronouncement : 19-04-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

These two appeals filed by the assessee for A.Y. 2014-15 & 2015-16, arise from order of the CIT(A), Rajkot-2 dated 06-03-2020, in proceedings under section 250 of the Income Tax Act, 1961; in short “the Act”.

2. Since common issues are involved for both the years under consideration, both the appeals are being taken up together. We shall first take up the appeal for assessment year 2014-15 and our observations for this year would equally apply to assessment year 2015-16 as well.

**Assessment year 2014-15:**

3. The assessee has taken the following grounds:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>On the facts and circumstances of the case and in law, the learned CIT-(A) has erred in law and on facts in confirming the order passed by the Learned AO U/s. 201(1) r.w.s. 201 (1A) of the Act and in directing that tax is required to be deducted U/s. 194J of the Act and not U/s. 194C of the Act.</i>	<i>Rs.4,33,287/-</i>
2.	<i>On the facts and in the circumstances of the case and in law the learned CIT (A) ought to have pass a speaking order and ought to have follow the CBDT Circular, binding precedent of hon'ble Apex Court and of ITAT, Ahmedabad which is fully applicable to the issue under consideration.</i>	<i>Rs.4,33,287/-</i>

3	<i>On the facts and in the circumstances of the case and in law, the learned CIT(A) ought not have confirmed the order passed by AO treating the appellant in default and demanding the alleged differential tax with interest from the appellant by confirming the order passed U/s. 201(1) r.w.s. 201(1A) of the Act.</i>	Rs.4,33,287/-
4	<i>It is therefore prayed that the orders passed by lower authorities may be quashed and set aside.</i>	Rs.4,33,287/-
5	<i>Your appellant craves leave to add, amend, alter or withdraw any ground of appeal at the time of hearing.</i>	Rs.4,33,287/-
	<i>Total tax effect (see note below)</i>	Rs.4,33,287/-

4. At the outset we note that the appeal is time-barred by 298 days. The Ld. Counsel for the assessee submitted that delay is caused due to the fact that the appeal has been filed during the Covid pandemic period and accordingly, the delay was caused by circumstances beyond the control of the assessee. We note that the assessee company received the order of Ld. CIT(Appeals) on 15-04-2020. However, in view of the nation-wide lockdown from 24<sup>th</sup> March 2020, the Apex Court in **Cognizance for Extension of Limitation, In re[2021] 127 [taxmann.com](http://taxmann.com) 72 (SC)**, took *suo motu* cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country. Consequently, it was directed vide order dated 23-3-2020 that the period of limitation in filing petitions/applications/suits/appeals/all other proceedings, irrespective of the

period of limitation prescribed under the general or special laws, shall stand extended with effect from 15-3-2020 till further orders. The *suo motu* proceedings were, disposed of issuing the directions as to in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021. Thereafter, in the case of **Cognizance for Extension of Limitation, In re [2022] 134 [taxmann.com](https://www.taxmann.com) 307 (SC)**, held that in view of spread of new variant of COVID-19 and drastic surge in number of COVID cases across the country, period from 15-3-2020 till 28-2-2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings. in cases where limitation would have expired during period between 15-3-2020 till 28-2-2022, notwithstanding actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022; in event actual balance period of limitation remaining, with effect from 1-3-2022, is greater than 90 days, that longer period shall apply In view of the above, since the delay of 298 days in filing appeal is falling within the Covid pandemic period, the delay is hereby being condoned.

5. The brief facts of the case are that the survey under section 133A of the Act was carried out at the office premises of the assessee on 28-11-2014 for verification of TDS compliance. The assessee is a partnership firm engaged in the business of manufacturing of salt, providing liquid storage tank and providing warehouse on hire, trading of goods and commodities

and sale of power, which are generated through windmills. From the details collected during this course of survey, the AO observed that the assessee had made payment of operation and maintenance charges and AMC charges to M/s Suzlon Group Companies. On verification of accounts, the AO observed that TDS on these payments have been made under section 194C of the Act. However, the nature of payments made to M/s Suzlon Group Companies is in lieu of technical services rendered for maintenance of windmills. Therefore, the AO held that the payment is in the nature of “fee for technical services” or “managerial services” and taxes are required to be deducted under section 194J of the Act as against taxes deducted by the company under section 194C of the Act.

6. In appeal, Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

“6. *Decision*

*The appellant contended that the A.O. ought not to have treated the assessee in default and ought not to have passed the order u/s. 201(1) r.w.s. 201(1A) of the Act and created differential tax with interest from the assessee. The appellant therefore in support contended that the provisions of section 194C are applicable to the assessee on the annual maintenance charges paid to Suzlan Globe Services Ltd. for which the assessee relies on CBDT Circular No. 715 and 720 explanation (a) to section 194J and explanation (2) to clause (vii) of subsection (1) of section 9 also the decisions of Hon'ble ITAT Ahmedabad Bench on similar facts and lower tax deduction certificate issued by the TDS wing of Income tax department in deductee sister concern and also relied on the decision of the Apex Court in the case of Hindustan Coco Cola Sewerages Pvt. Ltd., 293 ITR 226 even if there is a short deduction of tax as alleged the same cannot be recovered from the appellant. I have carefully considered the appellant's contentions above. The appellant has failed to substantiate the claim as required to follow the decision of the Apex Court in the case of Hindustan Coco Cola Sewerages Pvt. Ltd., 293 ITR 226 even if there is a short deduction of tax as alleged the same cannot be recovered from the appellant. However it is crystal clear from the invoices which*

are reproduced for ready reference as under clearly states that such charges were paid for technical services.

Invoice No. & date	Invoice Sr. No.	Description	Amount
SGSL/SER/14-15/ 9405030204 dtd.01.04.14	1	Technical Services covering checking of various technical, safety and operational parameters of the Equipment.	1,37,812.50
SGSL/MNT/14-15/ 9405032404 dtd.01.04.2014	1	Towards preventive maintenance and upkeep of Renewable Energy Device/Wine Mills including labour and materials	5,51,250.00
	2	Towards Breakdown Repairs of Renewable Energy Devices/ Wind Mills including labour and materials	9,64,687.50
SGSL(0&M)/MNT/1 3-14/9305032959 dtd.01.01.2014	1	Towards preventive maintenance and upkeep of Renewable Energy Device/Wind Mills including labour and materials	5,51,250.00
	2	"towards Breakdown Repairs of Renewable Energy Devices/ Wind Mills including labour and materials	9,64,687.50
SGSL(0&M)/SER/13-14/ 9305030761 dtd.01.01.2014	1	Technical Services copying checking of various technical, safety and operational Parameters of the Equipment.	3,30,750.00
<b>Total</b>			<b>35,00,437/-</b>

The appellant's claim is devoid of merit and it is accordingly held that the appellant had paid for technical services for Rs. 35,00,437/- therefore liable to

*deduct tax on such payment u/s 194J of the Ac. The assessee has as such deducted TDS @ 2% u/s 194C is not maintainable therefore I confirm the action of the assessing officer to levy short deduction of tax as required u/s 194J of the Act as under*

<i>F.Y. 2013-14</i>
<i>Amount of AMC Charges Paid 35,00,437/-</i>
<i>Tax deducted @ 2% u/s. 194C 70,008/-</i>
<i>Tax deductible @ 10% u/s. 194J 3,50,044/-</i>
<i>Short deduction 2,80,036/-</i>

*Accordingly the interest levied @ 1% on such lapse u/s 201(1A) for Rs.67,208/- of the Act is also confirm. In all the addition made for such default for total of Rs.3,47,244/- (2,80,036 + 67,208) is also confirmed. In view of section 201(1) r.w.s. 194J/194C and u/s 201(1 A) of the Act. The ground of appeal on this account is accordingly is **dismissed.**”*

7. Before us, the counsel for the assessee primarily reiterated the submissions made before Ld. CIT(Appeals). The counsel for the assessee submitted that the service provider M/s Suzlon Group Companies provided the services for repairs and maintenance/preventive maintenance/breakdown of various windmills and did not provide any professional or technical services to the assessee requiring tax to be deducted under the provisions of 194J of the Act. Further, the counsel for the assessee submitted that the assessee entered into two contracts with M/s Suzlon Group Companies: (i) operation and management agreement and (ii) maintenance agreement. The contention of the counsel for the assessee is that under both the agreements, the work involved is of normal upkeep of windmills to see that the same remained operational and are able to give adequate output/generation of electricity, the date of electricity generation is properly recorded and the information is conveyed property to the State Electricity Board and provision of crane service in case of breakdown. Further, the counsel for the

assessee relied upon the decision of **Gujarat State electricity Corporation Ltd 82 TTJ (Ahd) 456** to the effect that where there is a composite contract, payments made for different jobs cannot be segregated to apply different sections for tax deduction at source instead of section 194C of the Act.

7.1 In response, the DR placed reliance upon the observations made by the AO and. Ld. CIT(Appeals) in their respective orders.

8. We have heard the rival contentions and perused the material on record. The assessee has produced before us copies of the relevant agreements for our perusal. We observe that in the first agreement: Operation and Maintenance Agreement (services only), the scope of work is as below:

*“2.1 Operation and Management Services*

*SISL shall perform the following services in relation to the Equipment in accordance with the safety management plans and procedures as applicable and/or in accordance with accepted industry practices:*

*Services involving Labour only*

*I Routine Post operative and other operational Services*

*Making available suitable manpower for operation and management of the Equipment and covers periodic preventive management, cleaning and upkeep of the Equipment including –*

- a) Tower Torquing*
- b) Blade Cleaning*
- c) Nacelle Torquing and Cleaning*
- 4) Transformer Oil Filtration*
- e) Control Panel & LT Panel Maintenance*
- i) Site and Transformer Yard Maintenance*

*II Security Services As mentioned in Clause 5.5*

*III Management Services*

- a) *Data logging in for power generation, grid availability, machine availability.*
- b) *Preparation and submission of monthly performance report,*
- c) *Taking monthly meter reading jointly with SEE, of power generated at Firm's Wind Farm and supplied to SEB Grid from the meter/s maintained by SEB for the purpose and co-ordinate to obtain necessary power credit report/certificate,*
- d) *Submission of detailed report of the Periodic preventive maintenance carried out with details of consumables / parts used.*
- e) *Prompt information in case of accidental damage/ shutdown of more than 24 hours,*
- f) *Breakdown Analysis report*
- g) *Schedule of repairing / replacing components with schedule.*
- h) *Liaison with insurance Firm including furnishing required information and all actions required for settlement of the claim from insurance company.*

*IV Technical Services*

- a) *Visual inspection of the WTG and all parts thereof,*
- b) *Technical Assistance including checking of various technical, safety and operational parameters of the Equipment, trouble shooting and relevant technical services.”*

8.1 A perusal of the terms of contracts under the head “management services” includes preparation and submission of monthly performance report, taking monthly metre reading jointly with State Electricity Board, submission of detailed report of periodic preventive maintenance carried out with details of consumables, breakdown analysis report etc. Further, the services under the head “technical services” includes technical assistance, including checking of various technical, safety and operational parameters of the equipment, troubleshooting and relevant technical services. Further, the balance services under the Agreement includes blade cleaning, transformer oil filtration, site and transformer yard maintenance etc. Therefore, on a perusal of the terms of the contract, the services are primarily in the nature

of contractual services towards operation and maintenance of windmills, even though the terminology used is “management services” and “technical services”.

8.2 On going through the second agreement, it would be useful to reproduce the terms of the contract for reference:

## **“2. SCOPE OF WORK**

### **2.1 Maintenance**

*SISL shall perform the following Maintenance and repairs involving materials in relation to the preventive and curative Maintenance of the WTG/s and /or the related equipment in accordance with the safety management plans and procedures as applicable and/or in accordance with accepted industry practices:*

#### ***Maintenance & Repair Work involving Labour & Material***

##### ***I Preventive Maintenance Work involving labour and materials***

*This involves labour as well as use of materials and consumables such as lubricants and oils,, minor/ low value electrical and mechanical parts, etc. for preventive maintenance and upkeep of the Equipment including –*

- a) HT Line and Electrical Maintenance*
- b) Greasing of Rotor Bearings, Gear Box and Generator*
- c) Topping up of Gear Box, Hydraulic and Transformer Oil*

##### ***II Curative maintenance/ Breakdown Repair Work involving labour and materials***

*The Breakdown repair Work involve labour and use of components, spares and consumables in the event of any breakdown or suspected breakdown due to any reasons excluding natural calamities which shall be covered by insurance company, in the Equipment or any part thereof, The breakdown shall be attended as soon as practically possible to put the Equipment back into operation. The breakdown repairs will cover cost of labour, spares/ materials and other works, which includes,*

- a) Spares repairs/replacement*

*b) Major breakdown as mentioned below –*

- *Rewinding/Repairs of Generator and Motors*
- *Rewinding/Replacement of Gear Box*
- *Rewinding/Repairs of Transformers*
- *Repairs/replacement of VCB*
- *Repairs/replacement of Blades*
- *Repairs/replacement of Controller and Control Panel*

*e) Crane charges for carrying out repairs/replacement.*

*d) Total replacement of oil in Gear Boxes and Transformers*

*e) Painting of Equipment”*

8.3 A perusal of the terms of contract shows that the services are primarily in the nature of greasing of bearings, spares repairs/replacement, repairs of major breakdowns, painting of equipment etc. Therefore, on perusal of the terms of the contract, the services, in our considered view are primarily are in the nature of operation and maintenance of windmills and *per se* no technical services are rendered so as to necessitate deduction of tax under section 194C of the Act.

8.4 In the case of **Bharat Forge Ltd. v Addl CIT 36 taxmann.com 574 (Pune - Trib.)**, the ITAT held that payment towards windmill operation and maintenance attracts provisions of section 194C of the Act. In the case of **DCIT v. Asian Heart Institute & Research Centre (P.) Ltd 82 taxmann.com 250 (Mumbai - Trib.)**, the ITAT held that payments in terms of the contract for annual maintenance of the medical equipment was liable to be subject to deduction of tax at source under section 194C of the Act. In the case of **ITO v. Dr. Balabhai Nanavati Hospital 86 taxmann.com 107 (Mumbai - Trib.)**, the ITAT held that payments for Annual Maintenance of

medical equipment being made for routine and normal maintenance would be covered by section 194C; same was not in nature of professional for technical services. In the case of **DHL Air Ltd. v. DCIT 86 taxmann.com 277 (Mumbai - Trib.)**, the ITAT held that payment made by assessee to its AE, for annual maintenance contracts would not fall under category of fee for technical services within meaning of provisions of section 194J but under works contract u/s 194C of the Act. In the case of **Kandla Port Trust v. DCIT 16 taxmann.com 273 (Rajkot)**, the assessee was running a port and in order to carry out its operations, machineries such as heavy cranes, weigh bridge, elevator, EPBX systems were installed. The Assessee awarded some contracts for repairs and maintenance of these machineries. At time of making payments to contractors, assessee deducted tax at source under section 194C. The Revenue authorities took a view that annual maintenance contract was in nature of technical services and therefore fell under section 194J of the Act. The ITAT held that since aforesaid agreement merely related to annual maintenance of machineries and not in respect of managerial, or technical or consultancy services, section 194J was not applicable. Therefore, impugned order passed by revenue authorities was not sustainable. In the case of **DDRC SRL Diagnostic (P.) Ltd. v. ITO 65 taxmann.com 146 (Mumbai - Trib.)**, the ITAT held that where assessee was running diagnostic laboratories and it paid routine maintenance charges to professionals for maintaining medical equipment and deducted tax at source under section 194C, it had not committed any default by deducting tax at source under section 194C of the Act.

8.5 In view of the facts of the instant case of the assessee and the judicial precedents on subject, we are of the considered view that payments are covered under section 194C of the Act, and not under section 194J of the Act.

9. In the result, the appeal of the assessee is allowed for assessment year 2014-15.

### **Assessment year 2015-16**

10. The assessee has taken the following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the learned CIT-(A) has erred in law and on facts in confirming the order passed by the Learned AO U/s. 201(1) r.w.s. 201(1A) of the Act and in directing that tax is required to be deducted U/s. 194J of the Act and not U/s. 194C of the Act.*

*2. On the facts and in the circumstances of the case and in law the learned CIT (A) ought to have pass a speaking order and ought to have follow the CBDT Circular, binding precedent of hon'ble Apex Court and of ITAT, Ahmedabad which is fully applicable to the issue under consideration.*

*3. On the facts and in the circumstances of the case and in law, the learned CIT(A) ought not have confirmed the order passed by the A.O. treating the appellant in default and demanding the interest from the appellant by confirming the order passed u/s. 201(1) r.w.s. 201(1A) of the Act.*

*4. It is therefore prayed that the orders passed by lower authorities may be quashed and set aside.*

*5. Your appellant craves leaves to add, amend, alter or withdraw any ground of appeal at time of hearing.*

*Total tax effect: Rs. 2,98,352/-”*

11. Since the facts of the assessee's case for assessment year 2014-15 and assessment year 2015-16 are similar, our observations for assessment year 2014-15 will also apply to assessment year 2015-16 as well.

12. Accordingly, the appeal of the assessee is allowed for assessment year 2015-16.

13. In the combined result, both the appeals of the assessee are allowed for assessment years 2014-15 and 2015-16.

Order pronounced in the open court on 19-04-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 19/04/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot