

आयकर अपीलीय अधिकरण,इंदौर न्यायपीठ ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No.02/Ind/2023
Assessment Year: 2015-16

I.T.O.(TDS)-1, Bhopal	<u>बनाम/</u> Vs.	Madhya Pradesh Rajya Ajeevika Forum, 3 rd Floor, Beej Bhawan, Arera Hills, Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AABAM9666N		
Assessee by	Ms.Shreya Jain, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.06.2023	
Date of Pronouncement	23.06.2022	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 04.11.2022 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"], which in turn arises out of order dated 27.10.2021 passed by learned ITO, TDS-1, Bhopal ["Ld. AO"] u/s 201(1)/(1A) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the revenue has filed this appeal.

2. The controversy involved in present appeal is the applicability of section 194C or 194J of the act for deduction of tax at source (TDS) out of a total payment of Rs. 3,38,00,000/- made by assessee to one payee named

“Action for Social Advancement (ASA)”, a project implementing agency (PIA) under Mahila Kisan Sashaktikaran Pariyojna (MKSP) scheme of Govt. While the assessee has made TDS u/s 194C @ 2%, the AO claims that the impugned payment attracted TDS at a higher rate of 10% u/s 194J. Accordingly, the AO created a demand of differential TDS of Rs. 27,04,000/- plus interest of Rs. 24,06,560/-; aggregating to Rs. 51,05,560/-. The assessee is contesting this demand.

3. Ld. AO found that the assessee is a government organization under Panchayat and Rural Development Ministry and registered as society. He further observed that the payment made by assessee to aforesaid ASA under MKSP was towards services which required skilled manpower and specialized knowledge; therefore the payment was in the nature of fee for professional or technical services and hence TDS was attracted u/s 194J @ 10%. The assessee, however, submitted that it had deducted TDS u/s 194C @ 2% in accordance with a specific clarification F.No. 275/30/2012-ITB dated 26.07.2012 issued by CBDT in this regard. However, the AO continued to insist his view that the TDS was required u/s 194J and not u/s 194C.

4. During first-appeal, Ld. CIT(A) was convinced with submission of assessee. He accepted that ASA is a PIA under MKSP, therefore the assessee has rightly deducted TDS u/s 194C in accordance with the clarification issued by CBDT. Accordingly, the CIT(A) deleted entire demand created by AO. The order of CIT(A) is extracted below:

and were duly considered.

5. Findings and Decision:

5.1 I have carefully gone through the relevant provisions of the act, the Memorandum of agreement and the board's circular in relevance to the facts and circumstances of this case.

5.2 The appellant is a facilitating agency on behalf of the government of India and GOMP to implement the scheme Mahila Kisan Sashaktikaran Pariyojana (MKSP) for women empowerment. The Government of India selects NGOs as Project implementing Agencies (PIAs). It approves grant, finalize the scope of work etc to ensure proper implementation of GOI programs in rural areas. The mode of operation is that society receives grants from central and state government and transfer it to NGOs working as PIAs as per prescribed guideline.

5.3 The Memorandum of understanding dated 21st December 2011 between MPRAF and ASA clearly recognizes ASA as PIA. The relevant paragraph reads as follows." Action for Social advancement (ASA), is a Non Government Organization (NGO) having its Head office at Bhopal , Madhya Pradesh, hereinafter referred to as

"PIA".. The MOU also categorically mentions the release of installments of Grant in aid to ASA which has been designated as PIA in the MOU itself. Further the details of the program and the obligations of the parties were clearly listed out in the MOU which clearly states that "ASA will be responsible for implementation of the project in accordance with the project proposal approved by the project approval committee.

5.4 The Boards circular vide F.No.275/30/2012-ITB dated 26th July 2012 has specifically addressed the issue of MKSP scheme. It clearly says **that the nature of relationship between the Government and the Project implementing organizations/agencies is that of a Principal and a contractor and hence payment to such project implementing organizations/agencies is covered under provisions of section 194C of the Act.** The Assessing Officer has simply overlooked the clear documentary evidences relied upon by the appellant and had simply taken a stand that the services of ASA required skilled manpower and specialized knowledge and hence the NGO(ASA) was providing technical services.

5.5 Further the AO observed that the nature of payment is grouped under "capacity building of SHG" which is similar to other NGOs catering to technical services. The AO had not categorically proved that there are other payments made by the appellant to the NGO ASA for specific technical services other than the work listed in the MOU.

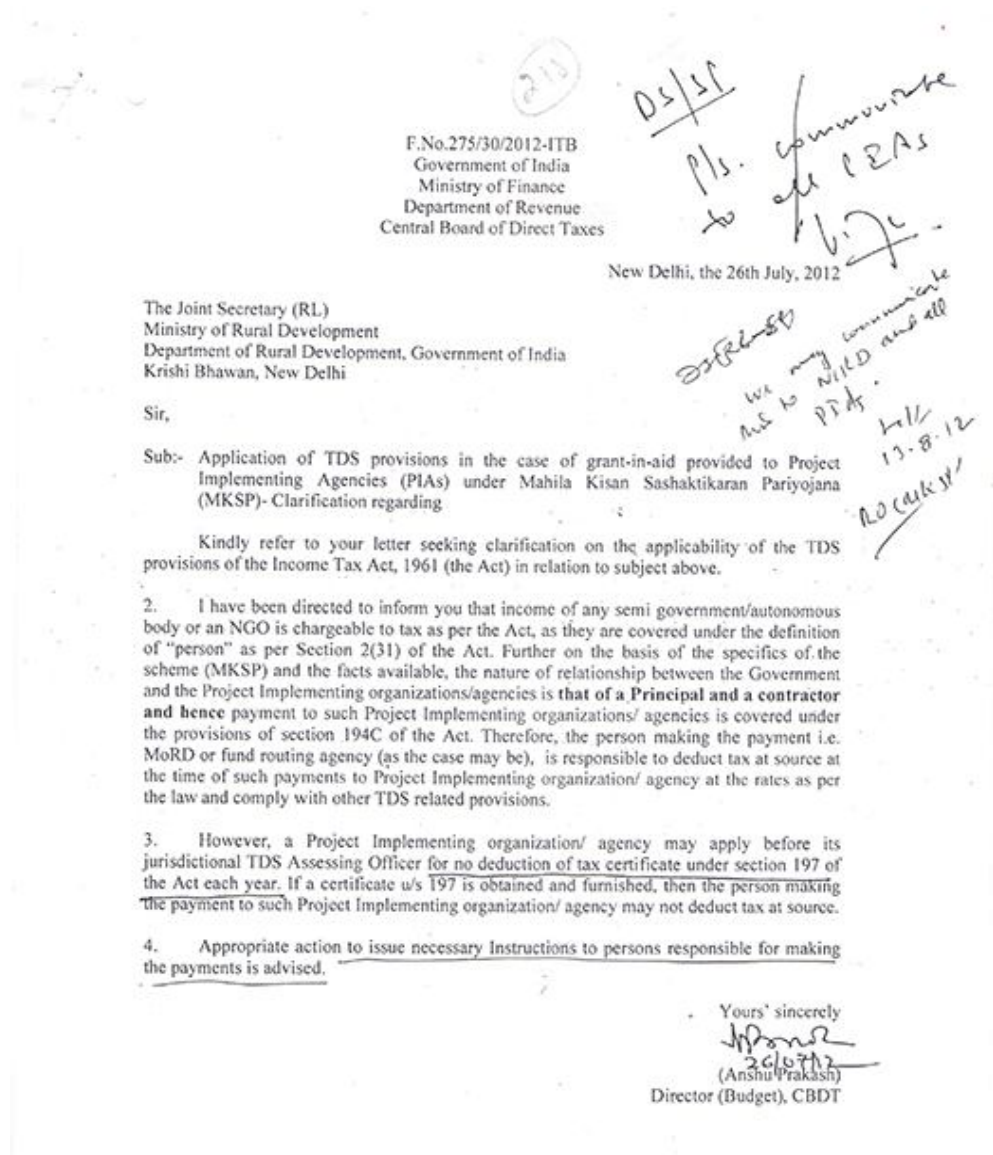
5.6 Any services whatever name is called, requires knowledge and skill in the relevant field. It doesn't mean that all services will come under professional or technical services. A careful perusal of explanation (2) to the section 9(1)(vii) shows that fee for technical services means managerial, technical or consultancy services. The AO wrongly interpreted the key activities of the ASA as per the MOU dated 21/12/2011 such as training/demonstration, imparting agriculture related productivity, enduring food and nutritional security, improving market access, drudgery reduction etc., as technical services u/s 194J. The AO failed to appreciate the intention of the clarification provided by the CBDT circular, wherein which it is clearly stated that the nature and relationship between the Government and PIA is that of Principal and contractor and hence payment to such PIAs is covered under provisions of section 194C. It is pertinent to emphasize the point that the clarificatory circulars are binding on the assessing Officers while framing assessment orders. Accordingly the order u/s 201(1)/201(A) is not valid and the same is deleted.

In the result, the grounds of appeal of the appellant is fully allowed accordingly.

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5. We have heard the learned Representatives of both sides. At first, we scan the impugned clarification issued by CBDT for an immediate reference, a copy of which is filed by Ld. AR alongwith "Synopsis of Argument":



6. On perusal of same, it is very much clear that the CBDT has categorically clarified that the payments made to PIAs under MKSP attracts TDS u/s 194C. Notably, the CBDT is an apex income-tax authority in terms of section 116 of Income-tax Act, 1961 and the clarification given by it is binding upon all subordinate income-tax authorities including Ld. AO in

present case. Therefore, the CIT(A) after taking into account the clarification issued by CBDT has rightly held that the assessee was required to deduct TDS u/s 194C and not u/s 194J and thereby deleted the demand created by AO. Ld. DR representing the revenue could not rebut or contradict the applicability of CBDT's clarification on facts. Being so, we do not find any infirmity in the order of CIT(A). We uphold the same. There is no merit in present appeal of revenue, consequently the same is dismissed.

7. Before parting we may add here that the Ld. AR has also made an alternative prayer that the present appeal by revenue is not sustainable as the tax effect involved is less than the monetary limit specified by CBDT in Circular No. 17/2019 dated 08.08.2019 for filing/withdrawing of appeals. Ld. DR representing the revenue, however, tried to defend such prayer. Since we have already dismissed this appeal on merit in the foregoing discussion, this alternative prayer of assessee is left open and we are not adjudicating the same at this stage.

8. Resultantly, this appeal of revenue is dismissed.

Order pronounced in the open court on 23/06/2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 23.06.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*