

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "DB" NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.241/DDN/2025
निर्धारणवर्ष/Assessment Year:2021-22**

DY. COMMISSIONER OF INCOME TAX, Aayakar Bhawan, 13-A, Subhash Road, Dehradun, Uttarakhand.	बनाम Vs.	HALLIBURTON OFF SHORE SERVICES INC., Unit No.603, 6 th Floor, Satellite Gazebo, East Wing, Guru Hargovindji Marg, Andheri Mumbai, Navi Mumbai, Maharashtra. PAN No.AAACH5154M
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Amit Arora, CA & Shri Vishal Mishra, CA
Revenue by	Shri Mohan Lal Joshi, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	09.02.2026
उद्घोषणाकीतारीख/Pronouncement on	11.02.2026

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal arises from order dated 30.09.2025, passed u/s 250 of the Income Tax Act, 1961 (hereafter referred to as "the Act") by Ld. CIT(A), Noida-2. In this case, the Revenue has filed the appeal basically challenging the action of Ld. CIT(A) in giving relief to the assessee on account of alleged deduction of tax at source u/s 194C of the Act instead of section 194J of the Act. The Ld. AO is seen to have disallowed expenditure claimed under the head "Professional fee", on account of this alleged mismatch.

1.1 The Revenue is aggrieved with this action and has approached the ITAT with the following grounds: -

“1. Whether on the fact and in the circumstances of the case and in law, the CIT(A) is justified in deleting the additions made on account of “TDS on legal and professional fee”, without appreciating the facts of the case.

2. Whether on the fact and in the circumstances of the case and in law, the CIT(A) was justified in not upholding the order of the AO, despite the fact that the assessee had failed to substantiate its claim on account of professional fee i.e. TDS has been made u/s 19 AC instead of 194J.

3. Whether on the fact and in the circumstances of the case and in law, the CIT(A) is justified in ignoring the direction of Hon’ble jurisdictional High Court of Uttarakhand mentioned in its order that “liberty is granted to the Revenue to approach this Court, if the aforesaid Civil Appeal is decided in the favour of the Revenue and the order passed by Hon’ble Kerala High Court is upheld.

4. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.”

2. Before us the Ld. DR relied on the order of AO and stated that deducting tax at source under the wrong section of the Act deserved for the connected expenditure to be disallowed. The Ld. DR also pointed out that the Hon’ble Uttarakhand High Court has granted liberty to the Revenue in the case of Samsung Heavy Industries Company Limited [176 taxmann.com 482 (Uttarakhand)], relied upon by the ld. CIT(A) to give relief, as under: -

“9. Learned counsel for the appellant further submitted that the judgment of Hon’ble Kerala High Court has been challenged before the Hon’ble Supreme Court in PVS Memorial Hospital Ltd. v. Commissioner of Income Tax [Special Leave to Appeal No. 26075-26076 of 2016, dated 02-11-2018], the Hon’ble Supreme Court granted leave in the matter and now it has been converted to Civil Appeal No(s). 10915-10916/2018 and, as per the website of Hon’ble Supreme Court, the case is ripe-up for final hearing and is still pending consideration before the Hon’ble Supreme Court, therefore, the hearing of present Appeal may be deferred till decision in the aforesaid Civil Appeal.

10. We do not find any infirmity in the order of the Income Tax Appellate Tribunal.

11. *In the light of above observations, in our considered view, no substantial question of law arises for consideration in the present Appeal and, therefore, we refuse to admit the Appeal.*

12. *Accordingly, the Income Tax Appeal stands dismissed. However, liberty is granted to the Revenue to approach this Court, if the aforesaid Civil Appeal is decided in their favour and the order passed by Hon'ble Kerala High Court is upheld.”(Emphasis added)*

2.1 The Ld. AR, on the other hand, read out extensively from the relevant portion of the order of Ld. CIT(A), which for the sake of reference deserves to be extracted as under: -

“5.1.3 In its reply, the appellant has submitted that TDS was deducted at the rate of 2%. The appellant has further submitted that the AO failed to appreciate that section 40(a)(ia) is not applicable in cases of short deduction of tax(TDS) due to application of a different section but, is applicable only when tax is not deducted at all or not deposited with the Government within the due date. Besides other decisions, the appellant has placed reliance on decision of Hon’ble Jurisdictional Uttarakhand High Court in the case of CIT w. Samsung Heavy Industries Company Limited(2025) 176taxmann.com482 wherein it is held that Section 40(a)(ia) of the Act cannot be made applicable to short deduction of tax at source and the disallowance made was directed to be deleted.

5.1.4 I have carefully considered the facts and judicial precedents. It is to note that vide Finance Act 2020, the rate at which TDS is to be made w.r.t payments on account of “fee for technical fees” u/s 194J stand amended to 2% as against 10% earlier. Since, the said amendment is applicable for transactions undertaken after 1.04.2020, the said amendment is applicable to the year under consideration. In this backdrop, it is noted that the rate at which tax is deducted by the appellant is as per the prescribed rates of the Act as the nature of service listed by the AO in Table on page 4 and 5 of the assessment order, prima-facie appear to be fee for technical services. Further, the issue of disallowance of expenditure on account of short deduction/deduction under incorrect section of TDS has been put to rest by the Hon’ble jurisdictional Uttarakhand HC vide its order in the case of CIT v. Samsung Heavy Industries Company Limited(supra). Therefore, respectfully following the judicial ratio laid down by the jurisdictional High Court, disallowance of Rs.4,47,53,145/- is deleted. The ground of appeal is allowed in favor of appellant.”

The Ld. AR placed on record a Coordinate Bench decision in the case of M/s Samsung Heavy Industries Company Limited [ITA No.1315/Del/2017], order dated 22.12.2023 in which this identical issue has been adjudicated as under: -

“14. We have heard the rival submission and perused the material available on record. It is not in dispute that the assessee made payments to Arjun Engineering Pvt. Ltd and Builcraft Interior Pvt. Ltd and deduced tax at source @2% thereon in terms of section 194C of the Act for carrying out electrification work and interior work respectively. The revenue concluded that the said work falls under the limb of professional services and fee for technical services warranting deduction of tax at source u/s 194J of the Act @10%. Since the assessee had not deducted tax at source in terms of section 194J of the Act, the Id AO proceeded to disallow the expenses u/s 40(a)(ia) of the Act. Now the short question that arises for our consideration is whether the provision of section 40(a)(ia) of the Act per se could be made applicable for short deduction of tax at source. This issue is no longer res integra in view of the decision of Hon'ble Calcutta High Court in the case of S. K. Tekriwal in ITA No. 183/2012 GA \o, 2067/2012 dated 03.12.2012 wherein it had been categorically held that section 40(a)(ia) of the Act cannot be made applicable to short deduction of tax at source a- z the disallowance made was deleted. Further the Hon'ble Delhi High Court in the case o PCIT Vs. Future First Info Services Pvt. Ltd in ITA No. 195/2022 dated 14.07.2022 hadalso given the same proposition. The Id CIT(A) however relied on the decision of the Hon'ble Kerala High Court in the case of PVS International Hospital Ltd reported in 380 ITR 284 (Ker) and decided the issue against the assessee. As could be seen above, none of the High Court decisions referred are the decisions rendered by the Hon'ble Jurisdictional High Court. The Hon'ble Supreme Court in the case of Vegetable Products Ltd reported in 88 ITR 192 had held that when there are divergent views of various non-Jurisdictional High Courts on an identical issue, the construction that is favourable to the assessee should be considered. Respectfully following the said decision of the Hon'ble Supreme Court, we are inclined to follow the ratio laid down by the Hon'ble Calcutta High Court and decision rendered by the Hon'ble Delhi High Court referred (supra) and hold that section 40(a)(ia) of the Act cannot be made applicable for short deduction of tax at source. Accordingly, the Id AO is hereby directed to delete the disallowance thereon. The grounds raised by the assessee are allowed.”*

It was the further submission that the finding of the ITAT has been affirmed by the Hon'ble Jurisdictional High Court, which has been relied upon by the Ld. CIT(A).

3. We have carefully considered the facts of the case and have gone through the documents before us. We have also perused the case laws relied upon by the Ld. AR. It is clear that the issue of alleged wrong deduction of tax at source cannot be decided in favour of the Revenue for the reason that firstly there is no loss since both the sections direct a deduction rate of 2%. Also, the Coordinate Bench order in the case of Samsung (supra), which has been affirmed by the Hon'ble Uttarakhand High Court, has considerable persuasive value in deciding this issue in favour of the assessee and against the Revenue. We also need to record that the finding of the CIT(A) extracted (supra) is also in line with the law and hence, is supported and upheld.

3.1 Regarding ground no.3 of the Revenue, we agree that just as the Hon'ble Uttarakhand High Court has granted liberty to the Revenue to approach the Hon'ble High Court in para 12 (supra), we also grant liberty to the Revenue to approach the ITAT in case the order of the Hon'ble Kerala High Court in the case of PVS Memorial Hospital Ltd. (supra) is decided in favour of Revenue. In the result, ground no.3 is allowed.

4. In the result, this appeal is partly allowed.

Order pronounced in the open court on 11.02.2026

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(SANJAY AWASTHI)
ACCOUNTANT MEMBER

Dated: 11.02.2026

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI