

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM

आयकर अपील सं./ITA No.2882/Mum/2014
(निर्धारण वर्ष / Assessment Year :2011-2012)

DCIT(TDS)-2(1), Mumbai	Vs.	M/s Larsen & Toubro InfoTech Ltd., Gage No.2, South Block, Saki Vihar Road, Powai, Mumbai-400072
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL 1681 P		

AND

आयकर अपील सं./ITA No.5974&5973/Mum/2014
(निर्धारण वर्ष / Assessment Years :2011-12 & 2012-13)

M/s Larsen & Toubro InfoTech Ltd., Gage No.2, South Block, Saki Vihar Road, Powai, Mumbai-400072	Vs.	DCIT(TDS)-2(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL 1681 P		

राजस्व की ओर से /Revenue by : Ms. Vinita Menon

निर्धारिती की ओर से /Assessee by : Shri Vijay Mehta

सुनवाई की तारीख / Date of Hearing : **22/12/2015**

घोषणा की तारीख/Date of Pronouncement **24/02/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the cross appeals filed by the revenue and assessee against the order of CIT(A)-Mumbai for the assessment years 2011-2012 & 2012-2013, in the matter of order passed u/s.201(1) & 201(1A) of I.T.Act, 1961.

2. As the common issues are involved in all these appeals, therefore, all the appeals were heard together and are being disposed off by this consolidated order.

3. The grievance of the revenue in its appeal i.e ITA No.2882/Mum/2014(AY:2011-2012), pertains to action of the CIT(A) in holding that bank guarantee charges are not in the nature of “commission” and no TDS was required to be deducted on such charges paid to bank u/s.194-H of the Act.

4. Rival contentions have been heard and record perused. The CIT(A) deleted the disallowance of bank guarantee charges on the plea that the assessee was not required to deduct tax in respect of bank guarantee, after having the following observations :-

“3.3 I have perused the facts of the case, submission of the appellant and assessment order u/s.201(1)/201(1A) and the order of the Hon’ble ITAT in the case of M/s Kotak Securities Ltd. in ITA No.6657/Mum/2011 dated 03.02.2012 for A.Y.2004-05 wherein the Hon’ble ITAT has held inter alia as under :-

“In the case before us, there is no principal agent relationship between the bank issuing the bank guarantee and the assessee. When bank issues the bank guarantee on behalf of the assessee, all it does is to accept the commitment of making payment of a specified amount to, on demand, the beneficiary and it is in consideration of this commitment the bank charges a fees which is customarily termed as Bank Guarantee Commission. While it is termed as guarantee commission it is not the nature of commission as it is understood in common business parlance and in the context of the section 194H. this transaction, in our considered view, is not a transaction between principal and agent so as to attract the tax deduction requirements u/s.194H. We are therefore of the considered view that the CIT(A) indeed erred in holding that the assessee was indeed under obligation to deduct tax at source u/s.194H from payments made by the assessee to various banks. As we have held that the assessee was not required to deduct tax at source u/s.194H, the question of levy of interest u/s.201(1A) cannot arise. In view of the above discussion, we quash the impugned demands u/s.201(1) and 201(1A) r.w.s.194H. We therefore, also see no need to deal with other peripheral legal issues raised by the assessee.

3.4 The facts remaining the same, respectfully following the decision of the Hon’ble ITAT, cited supra, it is held that no TDS is payable on Bank Guarantee Charges u/s.194H. Therefore, it is held that the assessee was not required to deduct TDS u/s.194H. Hence, the assessee cannot be considered to be assessee in default u/s.201(1). The addition made u/s.201(1) of Rs.11,59,331/- stands deleted.”

5. We have considered rival contentions and found that while deleting the disallowance the CIT(A) has relied on the decision of ITAT in the case of M/s Kotak Securities Ltd. (supra), wherein it was held that no TDS is required to be deducted in respect of bank guarantee charges paid to bank, accordingly assessee cannot be said to be in default for such non-deduction of TDS on such payment. Facts of the instant appeals are similar, respectfully, following the order of the Tribunal in the case of Kotak Securities (supra), we do not find any infirmity in the order of CIT(A) holding that assessee is not in default for non-deduction of TDS on such payments. Accordingly, appeal of the revenue is dismissed.

6. The assessee in its appeals i.e. ITA No.5974&5973/Mum/14(AY:2011-12 & 2012-13), has taken common grounds, which pertain to deduction of tax at source in respect of expenditure by way of amount paid for maintenance of computer service u/s.194J.

7. We have considered rival contentions and found that so far as the expenditure on AMC is concerned, the assessee had deducted tax at source as per the provisions of S.194C of the Act and this is also the law laid down by the Tribunal in the case of Facets Polishing Works (P) Ltd. Vs. ITO(TDS) [69 SOT 361(Ahd)], a copy of which is placed on record. However, the AO held that assessee should have deducted tax u/s.194J.

8. The only dispute is as to whether maintenance charges is subject to deduction u/s.194C or 194J. The assessee has deducted tax u/s.194C, whereas the AO held that payment was made for technical services, therefore, liable for deduction of tax u/s.194J.

9. The issue is also covered by the decision of ITAT in the case of Pacific Internet (India) Pvt. Ltd., 318 ITR (AT) 179 (Mum), wherein it was held that under the provisions of sec. 194J of the Act (i) there should be payment in the nature of fees and (ii) it should be for availing of technical services. The expression technical service has not been defined in section 194J but the meaning given to the expression has been adopted from Explanation 2 to clause (vii) of section 9(1). The assessee had availed of bandwidth services and other infrastructure for providing internet access to its customers. These were standard facilities availed of by the assessee. Therefore, the payment made by assessee company to VSNL, MTNL and other concerns for availing of the services could not be said to be within the meaning of section 194J read with Explanation 2 to clause (vii) of section 9(1) of the Act.

10. From the record we also found that in earlier years' payment on account of maintenance of computer was accepted by the AO, as well as in the subsequent years. Respectfully following the order of the coordinate bench, as discussed above, we do not find any merit in the action of the lower authorities for holding that assessee is liable for deducting tax u/s.194J, in respect of internet charges and computer maintenance charges paid by the assessee.

11. In the result, both appeals of the assessee are allowed, whereas appeal of the revenue is dismissed.

Order pronounced in the open court on this 24/02/2016.

Sd/-

(PAWAN SINGH)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 24/02/2016

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**उप/सहायक पंजीकार****सत्यापित प्रति //True Copy//****आयकर अपीलीय अधिकरण, मुंबई /
ITAT, Mumbai**