

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH; AMRITSAR.

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER  
AND SH. B.P.JAIN, ACCOUNTANT MEMBER

I.T.A. Nos.112 & 113(Asr)/2011  
Assessment years:2008-09 & 2009-2010  
PAN:AMRG!1498E

Income Tax Officer (TDS) Vs. The Accounts Officer,  
Jammu. Govt. Medical College,  
Jammu.  
(Appellant) (Respondent)

Appellant By:Sh. Laxman Singh, CIT(DR)  
Respondent By: Sh. Joginder Singh, CA

Date of hearing :02/04/2012  
Date of pronouncement:07/05/2012

**ORDER**

**PER BENCH:**

These two appeals of the Revenue arise from the consolidated order of the CIT(A, Jammu, dated 27.01.2011 for the assessment years 2008-09 & 2009-10 respectively.

2. The Revenue in both the appeals has raised following common grounds of appeals, which are as under:

- “1. That the Id. CIT(A) has erred in holding the payment treated as payments for technical services by the AO u/s 194J as payments for Annual Maintenance Contract covered u/s 194C.
  2. That the Ld. CIT(A) has erred in allowing the relief on the basis of Circular No.715 as Annual Maintenance Contractors in the case are entirely for technical services.
  3. That the Id. CIT(A) has erred in allowing the relief by relying on the case of M/s. Eastern Typewriters Services vs. State of A.P.(42 STC 18) which involve Annual Maintenance Contract of Typewriters whereas the present case the contract is for sophisticated machines like ST SCAN R.O. System etc. which can not be compared with the typewriter.
  4. That the appellants crave the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing.”
3. The brief facts for the assessment year 2008-09 are that the assessee is a Govt. Medical College at Jammu. The assessee had entered into contracts with a number of parties for maintenance of various equipments and made payments to them and deducted tax u/s 194C of the Act. In two of the parties tax was deducted u/s 194J of the Act. In other cases, the assessee had deducted tax u/s 194C of the Act, whereas the AO under section 201(1) & 201(1A) had observed that the assessee had made payments for technical services and therefore, had made a short deduction and late payment of tax and total demand was Rs.2,64,390/- for the financial year 2007-08 and Rs.7,73,570/- for the financial year 2008-09 was raised. The Ld. CIT(A) in his order at pages 5 & 6 observed as under:

“In respect of all the other contracts they are found on different footing as they all are for routine maintenance. In those cases no technical services were required to run the plants and equipment as they were handled by the employees of the assessee on day to day basis but maintenance including the supply of spares was to be done by most of the agencies. The contract for past control also cannot be said to involve any technical services as such. Though generally speaking almost all the services or work contracts may involve certain amount of technical expertise yet it cannot be said that these are for providing ‘technical services’ which is defined in explanation 2 to clause (i) of sub section 1 of section 9 of the I. tax Act as under:

*“Fee for technical services” means any consideration (including lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration of any construction, assembly, minning or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head salary.”*

In these contracts as above no ‘technical services’ were to be supplied by the second parties though the contracts were for services to be rendered primarily. The case law relied by the assessee in its written submissions of M/s. Eastern Typewriters Services vs. State of A.P. 42 STC 18 where it was held that when an assessee entered into a contract with the government department for repairing and serving typewriter and other equipments at periodical intervals and at certain specified rates, the same was work contract’.

In all the contracts mentioned in question here the equipment were run by assessee but the repairs and maintenance, were done by contractors which though required a certain expertise yet the contract cannot be termed as a contract for providing ‘technical services’. The limited ‘technical’ expertise, which is required in almost all types of work was merely used to facilitate the routine maintenance work and not for providing ‘technical services’ as such.

In view of the above, I hold that the contracts under discussion were covered under work or service contracts and the circular 715 was

clearly applicable, hence there was no short deduction of taxes and the demand so created in respect of them (except two contracts of running the equipment as discussed above) was not at all enforceable and assessee is not to be treated in default.”

4. The Ld. CIT (DR) Sh. Laxman Singh argued and invited our attention to the various provisions contained in the contracts submitted and various paras of the order u/s 201(1) & 201(1A) that only services are technical services, which required a special skill and the same cannot be done otherwise than by a technical or a professional person. For the meaning assigned to the term ‘fees’ for technical services, the Explanation (2) to section 9(1)(vii) has to be taken into consideration. Mr. Laxman Singh, the Ld. DR further invited our attention to the agreement with M/s. Thermtronics Krilsoker Pvt. Ltd; for maintenance of theatre and surgical for which specialist is required who will visit and carry out the maintenance service and also emergency break down calls. Similarly, findings of the AO were shown to the Bench with regard to the RO system maintenance by M/s. Ridham Marketing Services, CT Scan system by M/s. Wipro GE Medical System and MRI machine by M/s. Siemens Ltd; and Lift maintenance by M/s. Otis Elevator as well as **sterilisation and medical** equipment by M/s. Xpert Technical Services and Anti Termite Treatment by M/s. Global Pest Control Organization etc. However, the Ld. DR remained silent about the

supply of Bread & Butter by Mr. Rakesh Kumar Malhotra and supply of security and personnel by M/s. Dogra Placement Services. The Ld. DR prayed to restore the order of the AO and reverse the order of the CIT(A).

5. On the other hand, the Id. Counsel for the assessee, Sh. Joginder Singh argued that there are four limbs of the work contract. The assessee had fulfilled all the four limbs. Therefore, the said contracts are work contract. If every contract is taken as a technical contract then there will be no work contract in the world. The contract is for repair and services only and running machine. He invited our attention to various pages of contract in this regard that these are only for the maintenance and service and not for technical services. Our attention was also invited to Circular No.715 dated 08.08.1995 of CBDT by making specific reference to question No.29 with regard to the contract to be covered under section 194C & 194J of the Act and the CBDT had answered that – routine, normal maintenance contracts which includes supply of spares will be covered u/s 194C of the Act. However, where technical services are rendered, the provision of section 194J will apply in regard to tax deduction at source. Therefore, the Ld. Counsel for the assessee relied upon the submissions made before the Ld. CIT(A), Circular of the Board and the agreements placed on record, relied

upon the decision of the CIT(A) and prayed to confirm the order of the ld. CIT(A).

6. We have heard the rival contentions and perused the facts of the case. As regards the appeal of the assessee in ITA No.112(Asr)/2011, the ld. Counsel for the assessee invited our attention, at the outset, that the demand in the financial year 2007-08 relating to assessment year 2008-09 is Rs.2,64,390/- only and therefore, in view of Instruction No.3 of 2011 [ F.No.279/MISC.142/2007-ITJ] dated 9<sup>th</sup> Feb.,2011, the department is prohibited to file the appeal having tax effect which does not exceed Rs.3,00,000/- before the Tribunal. This was objected by the Ld. DR and relied upon the same Instruction of CBDT on which the ld. Counsel for the assessee relied upon. The Ld. DR invited our attention to para 5 of the said Instruction, where the tax effect in the composite order of any High Court or appellate authority has to be taken into consideration even if the tax effect is less than the prescribed monetary limits in respect of one assessee.

6.1. After considering the said Instruction of the CBDT, before us, identical issue is involved in appeals for two different years by a composite order of the Ld. CIT(A) dated 27.01.2011 for the assessment years 2008-09 & 2009-10 respectively, where the composite tax demanded is more than Rs.3,00,000/- and, therefore, as per the said Instruction No.3 of 2011 of

CBDT (supra)the appeal of the revenue is maintainable. Therefore, the preliminary objection of Ld. AR is rejected.

6.2. As regards the appeal on merits, as argued by both the parties and facts available on record, we are of the view that whole issue is with regard to the contracts entered into by the assessee, which is a Govt. Medical College at Jammu, has entered into agreements with various parties to maintain operation theatre and surgical equipments, RO system, CT Scan Machine, MRI machine, Lift, Sterlisation and Medical equipments along with Anti-termite treatment and also there were contracts for supply of Bread and Butter and supply of security and personnel. As regards supply of Bread and Butter and supply of security and personnel, we do not see any technical part or technical services as per facts available on record. As regards other services, whether the same is contract u/s 194C of the Act or technical service u/s 194J of the Act, has to be perused. The assessee has claimed a contract u/s 194C of the Act. Therefore, we have to peruse whether the professional or technical services u/s 194J of the Act, which provides any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of (a) fees for professional services, or (b) fees for technical services, shall at the time of credit of such sum to the account of the payee or at the time of payment

thereof in cash or by issue of a cheque or draft or by any other mode whichever is earlier, deduct an amount equal to ten percent of such sum as income-tax on income comprised therein. This 10% has been inserted by the Finance Act w.e.f. 01.06.2007 in place of 5%. As per Explanation of section 194J, professional services and fees for technical services has been defined as under:

Explanation – for the purposes of this section:

- (a) “professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;
- b) “fees for technical services” shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

6.3. As per section 9(1)(vii) - Explanation (2) – the technical services have been defined as under:

Explanation [2] – For the purposes of this clause, “fees for technical services” means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Salaries”.



6.4. As per said Explanation in section 9(1), the fees for technical services means any consideration for the rendering of any managerial, technical or consultancy services including the provision of services of technical or other personnel, is a part of technical services and fees paid for that shall be considered for the purpose of section 194J of the Act. In the present case, on perusal of the various agreements placed on record by the assessee that firstly with regard to Theatre and Surgical operation with M/s. Thermtronics Krilosker Pvt. Ltd. As per conditions mentioned in the agreement in clauses (i) to (vi), the services of a technical qualified person are to be made available to the assessee to maintain equipments and therefore, the said technical services as per CBDT Circular 715 dated 8.8.1995 cannot be services of routine and normal maintenance. The operation Theatre and Surgical are highly technical equipments for the operations of the persons. Therefore, they cannot be maintained in a routine or normal manner, but a technical person is required for maintenance of such equipments.. Similar is the case with RO system, CT Scan Machine, MRI Machine, Lift and sterilisation & medical equipments for the agreements made between M/s. Ridham Marketing Services, M/s. Wipro GE Medical System, M/s. Siemens Ltd; M/s. OTIS Elevator and M/s. Xpert Technical Service respectively. Therefore, we are of the view that these contracts

cannot be the contracts in a routine or normal manner but for which technical service has been rendered and provisions of section 194J read with section 9(1) of Explanation-2 are attracted, read with section 201(1) and 201(1A), which the AO has rightly applied. We find no infirmity in the order of the Assessing Officer in this regard.

6.5. As regards anti-termite treatment for which the agreement was made with M/s. Global Pest Control Organization. This treatment though does not require technical expertise but it requires professional skill for the reason the spray of the anti termite chemicals in the premises or the machine, requires a highly and professionalized skill, in the absence of which there can be a loss to the life of the human being living therein, especially in the Medical College where the patients are admitted who visit the hospital for their treatment, have to be taken care. If spray is made by a person who is not professional or without any professional skill then consequences can be otherwise. Therefore, in the facts and circumstances of the case, we are of the view that this service has to be treated as professional service to be included for the purpose of section 194J read with section 9(1)(vii) Explanation (2). In the facts and circumstances of the case, except for the supply of Bread & Butter by Mr. Rakesh Kumar Malhotra and supply of security & personnel by M/s. Dogra Placement Services, we uphold the

findings of the AO and reverse the findings of the Id. CIT(A). Accordingly, the appeal of the Revenue is partly allowed.

6.6 The issue in the Revenue's appeal in ITA No.113(Asr)/2011 is identical to the facts discussed and adjudicated in ITA No.112(Asr)/2011 (supra) and our order in ITA No.112(Asr)/2011 shall be followed in ITA No.113(Asr)/2011 and accordingly, the appeal of the Revenue is partly allowed.

7. In the result both the appeal of the Revenue are partly allowed.

Order pronounced in the open court on 7th May, 2012.

Sd/-  
(H.S. SIDHU)  
JUDICIAL MEMBER

Sd/-  
(B.P. JAIN)  
ACCOUNTANT MEMBER

Dated: 7th May, 2012  
/SKR/

Copy of the order is forwarded to :

1. The Assessee: The Accounts, Govt. Medical College, Jammu.
2. The Income Tax Officer (TDS), Jammu.
3. The CIT(A), Jammu.
4. The CIT, Jammu.
5. The SR DR, ITAT, Amritsar

True copy

By Order

(Assistant Registrar)  
Income Tax Appellate Tribunal  
Amritsar Bench : Amritsar.