

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI. T.S. KAPOOR, ACCOUNTANT MEMBER
AND SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.532/LKW/2017
Assessment Year:2014-15

Jagran Prakashan Ltd. 2, Sarvodaya Nagar Kanpur	v.	ACIT (TDS) Kanpur
TAN/PAN:AAACJ3404A		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri J.S. Minhas, CIT (DR)		
Date of hearing:	27	08	2018
Date of pronouncement:	07	08	2018

ORDER

PER PARTHA SARATHI CHAUDHURY, J.M:

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-II, Kanpur dated 4/7/2017 as per following grounds of appeal:-

1. BECAUSE the "Authorities below' have erred in law and on facts in holding that sums aggregating Rs.1,08,45,007/- as had been incurred as expenditure by the appellant, on account of Annual Maintenance Contract (AMC) for repairs and maintenance of computers installed at various office premises of the appellant, attracted IDS @ 10% as prescribed in section 194J and in upholding the demand of Rs.8,67,598/- (on account of alleged short fall in TDS amount),
2. BECAUSE the AMC contracts, copies of which had duly been made available to the authorities below, provided for

a) regular check up and maintenance of computer system (installed in the business premises of the appellant);and

b) supply of spares, replacement of parts and accessories that had been rendered unserviceable/ unusable, owing to wear and tear and the same could not have been treated as 'fee for technical services' so as to attract deduction of tax at source @ 10%, as prescribed in section 194J.

3. BECAUSE sums aggregating Rs.1,08,45,007/- had been paid by way of payment towards "works contract", as envisaged in section 194C of the Act and' tax deducted at source @ 2% of the payments (as had been made by the appellant) met fully with the requirement of law and no further demand could have been validly raised against the appellant, on this score.

4. BECAUSE, irrespective of controversy about the applicability of rate of withholding tax" and on the facts and circumstances of the case, the appellant could not have been treated as "issuance in default" and no interest under section 201(1 A) amounting to Rs.3,12,335/- could have been levied.

5. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.

2. The limited issue in this appeal is whether the assessee was to deduct tax at source (TDS) @ 10% as per section 194J of the Act or whether tax was to be deducted @ 2% as per section 194C of the Act. So far as the Revenue is concerned, sums aggregating to Rs.1,08,45,007/- as has been incurred as expenditure by the assessee on account of Annual Maintenance Contract (AMC) for repairs and maintenance of computers installed at various office premises of the assessee attracted TDS @ 10% under section 194J of the Act. However, assessee per contra submits that the sums aggregating to

Rs.1,08,45,007/- has been paid by way of payment towards works contract as envisaged under section 194C of the Act and, therefore, tax has rightly been deducted at source @ 2% of the payments.

3. The facts regarding the issue under consideration is that the assessee incurred expenditure of Rs.1,75,56,680/- under the head 'Computer Repairs & Maintenance' during the year and deducted tax at source of Rs.2,16,904/- on payment of Rs.1,08,45,007/- under section 194C and TDS of Rs.6,71,166/- under section 194J on payment of Rs.67,11,673/-. The ACIT (TDS), however, was of the view that assessee should have deducted tax at source on the entire amount of Rs.1,75,56,680/- @10% under section 194J and he, therefore, vide order sheet entry dated 11/3/2016 required the assessee-company to show cause as to why it may not be treated as an assessee in default for not making TDS under section 194J of the Act @ 10% on the amount of Rs.1,08,45,007/-. Assessee filed reply vide letter dated 18/3/2016 stating that tax was deducted on Rs.1,08,45,007/- under section 194C of the Act because these payments were made for contractual work and, therefore, they come under the purview of section 194C. The ACIT(TDS), however, did not accept the reply of the assessee and made addition for the difference of TDS under section 194J and 194C of the Act of Rs.1,08,45,007/-.

4. During the appellate proceedings, assessee submitted that payments included in the amount of Rs.1,08,45,007/- are mostly payments made to computer Companies for AMC of Computers installed in various office premises of the assessee-company all over India and the balance expenditure are in the nature of repairs/spares etc. These payments were in the nature of contractual payments and not payments made to professionals and, therefore, covered under the purview of

section 194C. This fact was also clear from the ledger account and bills/vouchers submitted to ACIT (TDS) during the assessment proceedings. Therefore, the assessee has rightly deducted TDS on these expenditure under section 194C and the addition made by the ACIT (TDS) on this issue is erroneous and liable to be deleted.

5. The Id. CIT(A) after considering the assessment order and the submissions of the assessee, held as follows:-

“The appellant company incurred expenditure of Rs.1,75,56,680/- under the head 'Computer Repairs & Maintenance' during the year and deducted TDS of Rs.2,16,904/- on payment of Rs.1,08,45,007/- u/s 194C and TDS of Rs.6,71,166/- u/s 194J on payment of Rs.67,11,673/-. The AO however, held that the appellant should have deducted TDS on the entire amount of Rs.1,75,56,680/- @10% u/s 194J and he accordingly created demand of Rs.11,79,933/- for the difference of TDS. The AR of the appellant submitted that the payments included in the aforesaid amount of Rs.1,08,45,007/- were mostly payments made to computer companies for annual maintenance contract (AMC) of computers installed in various office premises of the company all over India and the balance expenditure are in the nature of repairs/ spares etc. and as these payments were in the nature of contractual payments, the company has rightly deducted TDS @2% u/s 194C. Appellant submissions before the AO were that TDS was made as per the rates as deemed fit. A perusal of the Annual Maintenance Contracts placed on record by the appellant it is clear that the payments made by the appellant for various AMC are for various services that are nothing but in the nature of professional and technical services though defined by a contract. In view of these facts placed on record the demand raised by the ACIT (TDS) on this issue is found to be justified and hence sustained. This ground is rejected.”

6. The Id. A.R. of the assessee vehemently argued that payments were made for works contract and it was nothing more than contractual payment which neither involve any professional nor technical skill and, therefore, are outside the purview of section 194J of the Act. Ld. A.R. of the assessee further submitted that contractual payments are covered within the purview of section 194C and tax deducted @ 2% was, therefore, correct. Ld. A.R. of the assessee invited the attention of the Bench to the paper book filed before us and submitted that copies of vouchers showing payment for AMC are there. On a perusal of the paper book and the vouchers filed in the paper book of AMC, we asked the Id. A.R. of the assessee whether these are the total bills and vouchers so far as the case is concerned, Id. A.R. of the assessee replied that these are some of the bills & vouchers which have been placed in the paper book and not the entire vouchers involved in this case. The Id. A.R. of the assessee also relied on various case laws as filed in the paper book.

7. The Id. D.R. placed reliance on the orders of the authorities below and at the same time submitted that assessee has not submitted entire vouchers in the paper book, therefore, it cannot be said that entire payment was made for AMC. Further, Id. CIT(A) has observed that a perusal of AMC contract placed on record by the assessee, it was clear that payments made by the assessee for various AMC of various services are nothing but in the nature of professional and technical services. The Id. D.R. pressed hard for re-verification of these documents and submitted that matter may be restored to the Assessing Officer.

8. We have perused the case record and heard the rival contentions and we find that proposition of law is crystal clear that any

payment made for any professional and technical services would attract TDS under section 194J of the Act and if the payments have been made for works contract or any contractual payment, the same would be covered within the purview of section 194C of the Act. Certainly, there is difference of rate as prescribed within the statute i.e. 10% under section 194J and 2% under section 194C. It was the argument of the Id. A.R. of the assessee that they have made all the payments for AMC and there does not involve any professional or technical skill and it is a payment made on contractual basis. The Id. D.R., on the other hand, has highlighted the fact that though some vouchers filed in the paper book are for AMC payment, however, as has agreed by the Id. A.R. of the assessee, entire bills and vouchers were not placed before the authorities below for verification and, therefore, Id. D.R. raised strong apprehension that the matter needs further verification of entire vouchers to find out whether whole of the payments were for AMC purpose. We do not have any doubt so far as the proposition of law is concerned which is enumerated in a crystal clear manner in both the provisions. Even the case law relied on by the Id. A.R. of the assessee points out the fact that for any contractual payment made, TDS would be deducted under section 194C and not under section 194J of the Act. However, to ascertain the fact a detailed factual verification is necessary and, therefore, we set aside the order of the Id. CIT(A) and restore the matter back to the file of the Assessing Officer to verify the entire vouchers relating to payment of Rs.1,08,45,007/- and if it is found that the entire payments are made for works contract and are in the nature of contractual payments without involving any technical or professional skill or knowledge, in such circumstances assessee will be covered within the purview of section 194C of the Act. Needless to say that

Assessing Officer shall adjudicate the issue after providing proper opportunity of hearing to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07/09/2018.

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[PARTHA SARATHI CHAUDHURY]
JUDICIAL MEMBER

DATED: 7th September, 2018

JJ:2808

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR