

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3081/Mum./2014 : Asstt. Year : 2009-10

ITA No. 3082/Mum./2014 : Asstt. Year : 2009-10

RBS Business Services Pvt. Ltd., (formerly known as ABN AMRO Central Enterprises Service Pvt. Ltd.), Empire Complex, 414, Senapati Bapat Marg, Lower Parel, Mumbai-400013	Vs	DCIT(TDS)-1(1), Mumbai-400002
(APPELLANT)		(RESPONDENT)
PAN No. AADCA1780D		

Assessee by : Sh. S. K. Agarwal, CA

Revenue by : Sh. T. Kipgen, CIT DR

Date of Hearing: 07.07.2022

Date of Pronouncement: 12.08.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-13, Mumbai, dated 17.02.2014.

ITA No. 3082/Del/2014

Section 194J & Section 194C:

2. Deduction of Tax on payment made towards internet and telephone charges.

3. The DCIT(TDS) held that the assessee has defaulting in not deducting tax **u/s 194J** of the Income Tax Act, 1961 on payment made to M/s Airtel and M/s Reliance Industries for lease line charges and broad band charges.

4. We have gone through the provisions of Section 194J and Explanation 2 to clause (vii) of Sub-section (1) of Section 9

5. Section 194J reads as under:

"Fees for professional or technical services.

194J. (1) 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, or

(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

(c) royalty, or

(d) any sum referred to in clause (va) of section 28,

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 per cent of such sum as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

(A) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(i) thirty thousand rupees, in the case of fees for professional services referred to in clause (a), or

(ii) thirty thousand rupees, in the case of fees for technical services referred to in clause (b), or

(iii) thirty thousand rupees, in the case of royalty referred to in clause (c), or

(iv) thirty thousand rupees, in the case of sum referred to in clause (d) :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :

Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family:

12[Provided also that the provisions of this section shall have effect, as if for the words "ten per cent", the words "two per cent" had been substituted in the case of a payee, engaged only in the business of operation of call centre].

*(2) [***]*

*(3) [***]*

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;

(ba) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(c) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly."

6. Further, Explanation 2 to clause (vii) of sub-section (1) of section 9 reads as under:

"(vii) income by way of fees for technical services payable by—

(a) the Government ; or

(b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

Provided that nothing contained in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976, and approved by the Central Government.

Explanation 1.—For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.

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".

7. The Id. CIT(A) held that the payments are not in the nature of 'fees for technical services' but the payments are liable for withholding u/s 194C of the Act.

8. Section 194C reads as under:

"Payments to contractors.

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor 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—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds one lakh rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

Explanation.—For the purposes of this section,—

(i) "specified person" shall mean,—

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central, State or Provincial Act; or

(d) any company; or

- (e) any co-operative society; or*
 - (f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or*
 - (g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or*
 - (h) any trust; or*
 - (i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or*
 - (j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or*
 - (k) any firm; or*
 - (l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—*
- (A) does not fall under any of the preceding sub-clauses; and*
- (B) is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;*
- (ii) "goods carriage" shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE;*
- (iii) "contract" shall include sub-contract;*
- (iv) "work" shall include—*
- (a) advertising;*
 - (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;*
 - (c) carriage of goods or passengers by any mode of transport other than by railways;*
 - (d) catering;*
 - (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,*

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer."

9. The provisions of Section 194C relates to deduction of tax at source for carrying out any work in pursuance of a contract between the contractor and a specified person. The primary requisites are there should a "contract" there should be a "work". As per the Section work includes advertising, broadcasting and telecasting including production of programmes for such broadcasting or telecasting, carriage of goods or passengers by any mode of transport other than by railways, catering and manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In the instant case, the payments made were for the usage of rights for the internet and telecom facility which were made available to the assessee as well as the public at large on payment of fees. The provisions of standardized facilities do not fall in the nature of "work" as defined u/s 194C of the Act. The facilities availed by the assessee are seamless transmission of the data and the services related to it.

10. Hence, the decision of the Id. CIT(A) cannot be supported.

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Section 194I:

11. The DCIT(TDS) found that an amount of Rs.8.91 Cr. was paid by the assessee to one entity named M/s Khiv Raj Tech Pvt. Ltd. as rent & maintenance and Rs.2.86 Cr. as electrical charges. Certificate u/s 197 issued by the revenue authorities

authorized payment without deduction to the extent of Rs.8.58 Cr. The assessee claimed that as per the CBDT circular, no TDS was required from the payment of pure reimbursement and since the electrical charges are reimbursement, no TDS provisions are attracted.

12. The Id. CIT(A) found no defect in withholding of taxes from rent payments by the assessee. However, held that the assessee has defaulted in following the provisions of TDS with regard to the amounts paid for maintenance.

13. We have gone through the lease deed dated 22.01.2007 wherein the Article 2 pertains to lease of the premises, Article 3 lease term, Article 4 lease renewal and Article 5 rent for premises, Article 8 deals for maintenance & utility charges which pertains to property Manager's fee, provisions for 24 hours security, maintenance of landscaped areas, maintenance and replacement of pump sets, maintenance of lifts and other machinery, electrical line common to the building, replacement of bulbs/light fittings in corridors & other common places and insurance of the building. We find that while the rent for premises is Rs.36/- per sft. Per month, the maintenance & utility charges was Rs.4.50 per month per sft. The lease rentals and the maintenance charges operate at different arenas with regard to the provisions of TDS.

14. The lease rentals are governed by Section 194-I whereas the maintenance charges are governed by Section 194-C. Hence, we direct the TDS authorities to re-compute accordingly.

15. In the result, the appeals of the assessee are allowed for statistical purpose.

Order Pronounced in the Open Court on 12/08/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 12/08/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR