आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR

श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

आयकर अपील सं./ ITA Nos. 21 to 27/RPR/2020
निर्धारण वर्ष/Assessment Years : 2012-13 to 2018-19

CG Professional Exam Board,
Vyapam Bhawan, North Block,
Atal Nagar, Sector-19,
Raipur-492 001 (C.G.)
PAN : AAAJC0449B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
TDS Circle, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by	:	Shri Abhishek Gupta & Smt. Kriti Laad, CAs
Revenue by	:	Shri Gitesh Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 29.08.2022
घोषणा की तारीख / Date of Pronouncement : 25.11.2022

आदेश / ORDER

PER RAVISH SOOD, JM

The captioned appeals filed by the assessee are directed against the orders passed by the CIT(Appeals)-1, Raipur dated 25.11.2019 & 26.11.2019, which in turn arises from the consolidated order passed by the DCIT, Circle TDS, Raipur under Sec.201(1) r.w.(1A) of the Income Tax Act, 1961 (for short 'the Act') dated 03.12.2018 for assessment year(s) 2012-13 to 2018-19. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. I shall take up the appeal in ITA No.21/RPR/2020 for the assessment year 2012-13 as the lead matter and the order therein passed shall apply mutatis-mutandis to the remaining cases. The assessee has assailed the impugned orders of the CIT(Appeals) on the following grounds of appeal before me :

> "1. The impugned order passed by the learned Commissioner of Income-tax [Appeals] u/s.250 and that of the learned Assessing Officer under Section 201(1) r.w.s (1A) of the I.T Act, 1961 of the Act is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
>
> 2. The appellant denies the tax liability determined by the learned assessing officer as short deduction under section 201(1) amounting to Rs.24,67,932/- (and interest thereon under section 201(1A) Rs.20,77,260/-) and confirmed by the learned Commissioner of Income-tax [Appeals], as against the

income reported by the appellant on the facts and circumstances of the case.

3. The Honourable CIT-(A), passed an order, without providing an opportunity of being heard (i.e. without proposal notice) whereby the assessee is aggrieved by the order passed u/s 250, being violation of principle of Natural Justice.

4. The Honourable CIT(A) relied on Judicial decisions which is not applicable under fact and circumstance, which deals with Disallowance under section 40(a)(ia) is not relevant to fact of the case to ascertain default under section 201(1) & 201(1A).

5. Without prejudice, the learned CIT(A) is not justified in passing order without following the decision of Calcutta High Court in case of CIT v. S.K. Tekriwal [2014] 361 ITR 432, and merely relying on contradictory decision arrived at without considering president of different High court with regard to section 40(a)(ia).

6. The Appellant is not liable for deduction of any TDS as the assessee has made payment for purchase of products (answer sheets, marks sheet, OMR sheet), as per specification of the assessee, without any Job work. [i.e. contract for supply of material is contract for sale does not contract for technical services].

7. Without prejudice, the learned Assessing officer is not justified in providing the part of the works (printing) as works contract and liable to TDS under section 194C and the balance part (such as scanning etc.) as professional under section 194J, when the entire work form part of one composite work. [i.e., contract for supply of material & service being incidental, ought to be treated as contract for works contract and not contract for technical services]

8. Without prejudice, thought the assessee with an abundant caution has deducted TDS u/s 194C, The Appellant is not liable for deduction of any TDS u/s 194J as the assessee has made payment as there is no "consultancy services" involved in printing of material as per requirements of Assessee.

9. Without prejudice, though the assessee has deducted TDS u/s 194C, The Honourable CIT(A) passed an order without any material evidence that the printers or suppliers/vendors are possessing any technical and professional qualification.

10. Without prejudice the Learned AO having bifurcated the process ought to applied section 194J only on those process where computers are involved and balance process/work TDS ought to have been applied u/s 194C.

11. Order based on surmise/presumption -The Entire Assessment order and CIT(A) order has been passed based on assumption that software has been used / software coding is done by the vendor, without any evidence that the customized software has been used by the vendors.

12. Without prejudice the appellant submits that the learned Assessing officer and Honourable CIT(A) is not justified in separating/ dividing the composite work of printing work from application to reporting the results, as contract and technical services

13. Without prejudice The appellant submit that the appellant is covered by the proviso to section 200(1) i.e., The Deductee has filed his return of income under section 139(1) taking into Account of the amount paid by the appellant and tax has been paid by him.

14. The appellant submits that the appellant is covered by proviso to section 201(1A), i.e., Interest is not applicable for a period of time beyond the due date of filing the return of income of deductee.

15. The learned assessing officer also erred in levying the interest u/s.201(1A) of the Act and the same are not in accordance with law on the facts and circumstances of the case. Further, the quantum, period and rate are not discernible from the assessment order.

16. The appellant craves leave of the Hon'ble Members of Income Tax Appellate Tribunal, to add, alter, modify, delete or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

> 17. For these and other grounds that may be urged at the time of hearing of appeal, the Appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity."

3. Succinctly stated, the assessee which is a self-governing body under the State of Chhattisgarh and conducts examination for recruitment of employees was subjected to a TDS survey u/s.133A(2A) of the Act on 10.10.2017. During the course of survey proceedings certain infirmities were observed by the survey officials, viz. (i). that the assessee had failed to deduct and deposit tax at source on the payments made to caterer; (ii). that the deductor had failed to deduct tax at source on payments made under a confidential head to a processing agency in accordance with section 194J of the Act; and (iii). that the deductor had though deducted and deposited the amount of tax at source, but had failed to reflect the names and PAN's of the payees in its TDS returns for the respective quarters.

4. During the course of the proceedings before the Dy. CIT, TDS, it was admitted by the assessee that there was failure on its part to deduct and deposit tax at source on the payments made towards catering services. Apropos the payments which were made by it under the head secret expenses, it was observed by the A.O that the same were made on two-fold counts, viz. (i) payments made to printing agency; and (ii) payments made to a processing agency. On a perusal

of the details, it was observed by the A.O that while for the printing agency was paid on account of its multi-facet job works, viz. printing applications, examination papers, copies etc., while for on the other hand the processing agency was paid for the services rendered by it on account of checking of papers, preparation of mark sheets, tabulation and other computer assisted work. It was observed by him that the assessee had deducted tax at source on the payments made to both the aforesaid agencies u/s.194C of the Act. It was, however, noticed by the A.O that the names and details of both the agencies to whom the payments were made after deduction of tax at source were not reflected in the assessee's quarterly TDS returns, for the reason that as the said details were confidential in nature, therefore, it was not permissible to put the same in the public domain. It was the claim of the assessee that as it had duly deducted and deposited tax at source on the respective payments, thus, no adverse inferences qua furnishing of the details was called for in its hand.

5. On a perusal of the details, it was, inter alia, observed by the A.O that the assessee had wrongly deducted tax at source on the payments made to the processing agency u/s.194C of the Act, as against that which ought to have been made u/s.194J, as under:

F.Y.	Payment made for processing	TDS deducted & deposited u/s.194C @2% (in Rs.)	Actual TDS to be deducted u/s. 194J@10% (in Rs.)	Shortfall of TDS (D-C)	Interest u/s. 201(1A)	Gross Amount (E + F)
A	**B**	**C**	**D**	**E**	**F**	**G**
2011-12	31007354	632805	3100735	2467932	2077260	4545192
2012-13	15021442	306761	1502144	1195383	890679	2086080
2013-14	8812829	179854	881283	701429	448583	1150012
2014-15	9866721	201363	986672	785309	402485	1187794
2015-16	8534522	174463	853453	678990	266037	945027
2016-17	13173278	268843	1317328	1048485	295142	1343627
2017-18	11508185	234863	1150819	915956	143215	1059171
Total	97924331	1998952	9792434	7793484	4523419	12316903

Although the assessee had on a suo-moto basis deducted tax at source u/s.194C of the Act on the payments made to the printing agency, but thereafter it came forth with a novel claim that it was under no obligation to deduct any tax at source at all on the said payments. On a perusal of the records, it transpires that the assessee had distanced itself from the obligation of deducting tax at source on the payments made to the printing agency, inter alia, for the reason that as the payments were made for supply of goods, i.e. printed answer sheets,

OMR sheets etc. as per its specifications and the supplier would procure the material from third parties, therefore, as per definition of term "work" contemplated in Explanation (iv)(e) of Section 194C of the Act, the services so rendered would not fall within the definition of the term "work", and, thus, could not be brought within the sweep of Section 194C of the Act. To sum up, it was the claim of the assessee that though it had deducted tax at source on the aforesaid payments u/s.194C of the Act, but no such obligation under law was in fact cast upon it. However, the aforesaid claim of the assessee was not accepted by the A.O, for the reason that no revised TDS return in support thereof was filed. Apart from that, it was observed by the A.O that not only the assessee had failed to come forth with any valid reason to justify its aforesaid claim, but had on the contrary issued Form-16A to the concerned vendors.

6. On a perusal of the contract agreement that was executed by the assessee with the vendor, i.e., printing contract, it was observed by the A.O that the terms of the contract did not reveal any sale contract but a contract for execution of job work. Considering the terms of the aforesaid contract, the A.O observed that the same revealed that the work in question would fall within the meaning of Section 194C of the Act. Apart from that, it was observed by the A.O that there was no material placed on record by the assessee which would evidence that

it had executed a sale contract with the aforesaid supplier party. Observing that as the assessee had not filed any evidence which would reveal as to whether the payments made were towards printing work or supply of papers and stationery, the A.O was of the view that in the absence of the requisite details the same was to be construed as a composite contract between the assessee and the vendors. Considering the aforesaid factual position, the A.O was of the view that as the assessee had entered into a composite contract, therefore, he was liable to deduct tax at source on the payments made to the vendor as per the provisions of Section 194C of the Act. Also, as the assessee had though deducted and deposited tax at source which was verifiable from records, but had failed to submit particulars of the deductee's in its quarterly TDS returns, therefore, the A.O for the said default initiated penalty proceedings u/s. 271H of the Act.

7. Adverting to the payments which were made by the assessee under the head confidential expenses, it was observed by the A.O that the same were payments made to a processing agency for tabulation, checking and preparation of marksheets etc. involving use of computers and online services of net connectivity. Considering the nature of the services, the A.O was of the view that as the processing agency had rendered professional services to the assessee by using its computers and software expertise, therefore, the assessee was

obligated to have deducted tax at source on the payments made to the said agency u/s.194J of the Act. On the basis of his aforesaid conviction that the nature of services rendered by the processing agency to the assessee were beyond doubt in the nature of professional services, for the reason that the nature of work executed involved professional skill and expertise, the A.O called upon the assessee to put forth an explanation as regards the reason for wrongly deducting tax at source u/s.194C as against Section 194J of the Act. In reply, it was the claim of the assessee that as in the preceding years it had out of sheer ignorance deducted tax at source on the aforesaid payments u/s.194C of the Act, therefore, it had as a matter of precedence during the year deducted tax at source on the said payments u/s.194C of the Act. Considering the fact that as the services availed by the assessee from the processing agency involved professional expertise, the A.O held the assessee in default for not deducting tax at source on the respective payments u/s.194J of the Act. Accordingly, on the basis of his aforesaid observations the A.O u/ss. 201(1)/201(1A) of the Act, raised an additional demand towards shortfall in deduction of tax at source by the assessee by wrongly taking recourse to the provisions of section 194C as against Section 194J of the Act, as under:

F.Y	Section	Shortfall of TDS (in Rs.)	Interest u/s.201(1A) (in Rs.)	Gross Amount (in Rs.)

2011-12	194J	24,67,932	20,77,260	45,45,192
2012-13	194J	11,95,383	8,90,697	20,86,080
2013-14	194J	7,01,429	4,48,583	11,50,012
2014-15	194J	7,85309	4,02,485	11,87,794
2015-16	194J	6,78,990	2,66,037	9,45,027
2016-17	194J	10,48,485	2,95,142	13,43,627
2017-18	194J	9,15,956	1,43,215	10,59,171
Gross total		**77,93,484**	45,23,419	1,23,16,903

8. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals), who not finding favour with the contentions of the assessee upheld the order of the A.O, observing as under:

> "I have considered the grounds of appeal and gone through the written submission made by the ld. Counsel appearing on behalf of the appellant and seen the order of the A.O. In the submissions the appellant had reproduced the provisions of Section 194C along with the explanation thereto which define "work", he has also tabulated the description of work entrusted to the processing agency in connection with making of envelopes, admit card, attendance sheets, scanning, general report, printing of data on admit card and other items with respect to the exams conducted for the students. It was further submitted by the appellant that he has complied with the provisions of the Act and made TDS on every payment to those agencies u/s.194C on the pretext that there is a contract for regular supply of material required for examination purposes. The provisions of Section 194J was compared with the provisions of Section 194C whereby the appellant submitted that the TDS was correctly made by him as he is not liable to deduct TDS u/s. 194J.
>
> The appellant has been making payments for availing services from the vendors pertaining to designing of admit cards, formatting of attendance sheets and examination papers and scanning image portion of application forms along with spaces for Roll No., Center list, alphabetical list as per the technical requirements of the examination board. The name of

the appellant itself is "Chhattisgarh Professional Exam Board" which indicates the professional nature of exams conducted by it and for which professional specifications of exam material are assigned to the printing and processing agencies for the examination work. The work specifications cannot be done by vendors who do not possess technical and professional expertise to design attendance sheets and examination papers which require professional competence for undertaking this sensitive task. To take an example, designing of question papers is a highly technical matter involving correctness and reversing or altering the sequence and serial number of questions in the same exam paper which can be done only by professionally competent persons and customized software. The payments made by the appellant are for these professional and technical services availed by it for examinations.

Section 194J of the Act reads as under:-

"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

any sum referred to in clause (va) of Section 28,]

The explanation to section 194J reads as under:-

> (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;

The services provided to the appellant are clearly technical consultancy as appearing in the provisions section 194J and the explanation cited above for which payments have been made by the appellant.

The TDS provision appearing in Chapter XVII B of the I.T. Act, 1961 are unambiguous which clearly lay down rates at which tax is to be deducted taking into account the nature of payment for different kinds of services and work. Each section under the above Chapter highlights various payments made to different persons and serves as guidelines for the rates of tax to be deducted thereon. TDS must be made in accordance with the specific provisions taking into account the nature of such payments made and wrong application of the provisions will render the deductor liable for default for short deduction of tax. From the agreement between the appellant and the vendor which has been reproduced by the AO in his order it is noticed that the contract between the payer and the payee is a contract for providing technical services and not a contract of technical services. The vendors are professionally competent in carrying out work relating to technical matters on conducting examinations by providing the desired and specific material. On the above issues it is fruitful to refer to judicial pronouncements and observations of the Hon'ble Courts.

In the case of CIT-1 Kochi v PVS Memorial Hospital Limited reported in 234 Taxman 46 the Hon'ble Kerala High Court held that the expression tax deductible at source under Chapter-XVII B occurring in section 40(a)(ia) has to be understood as tax deductible at source under appropriate provision of Chapter-XVII B and deduction under a wrong provision of law will not save an assessee from section 40(a)(ia) therefore where tax was deductible u/s. 194J but was deducted u/s. 194C such a deduction would not satisfy requirements of section 40(a)(ia). From the impugned decision it is clear that the statute mandates that the deduction has to be made under the appropriate provisions of the Act and not to an incorrect provision as a precedence, which the appellant has claimed to have made u/s. 194C regularly, which cannot be used as a defense in the light of the above observations of the court and in the facts of the case.

The Hyderabad ITAT Bench-A in the case of Assistant Commissioner of Income Tax, Circle-15(2) v Ushodaya Enterprises Pvt. Ltd. reported in 23 taxmann.com 258 held that where professional qualification and skills are required therefore TDS had to be deducted from aforesaid payments u/s 194J and not u/s 194C.

In the case of Deputy Commissioner of Income Tax, TDS Circle-22(1) v. Coastal Power Company reported in 9 SOT 89 the Hon'ble Delhi Tribunal A Bench held that since service agreements entered into between assessee and consultant

showed that contract was not one of service but was one for service and there was no employer employee relationship between assessee company and consultants, payments to consultants could not be held to be salaries and therefore section 192 was not applicable and since payments made by the assessee to consultants represented fees for professional services assessee was liable to deduct tax at source u/s 194J.

In the ITAT Cochin Bench in the case of Calicut University Central Cooperative Stores Limited v Income Tax Officer, Tirur reported in 50 taxmann.com 373 it was held amounts paid by the assessee to authors of books, literary work of authors, for purpose of printing and publication for use of students were liable for deduction of tax u/s 194J. In this case however the issue was of Royalty but since it involved payments for professional and technical services the assessee was required to deduct tax u/s 194J.

The case laws cited by the appellant are distinguishable on facts and circumstances in each case relied upon.

In the case of Dy. CIT v. Parasrampuria Synthetics Ltd. [2008] 20 SOT 248 (Delhi-Trib,) the issue was payments made to a contractor in respect of inspection and maintenance support agreement and fabrication of chilled water line. It was held that these payments could not be treated as fees for technical services as technology or technical knowledge of persons were not made available to the assessee. As can be seen from the facts of the case that the payments were to a contractor for inspection and maintenance support agreement.

The next case relied upon is Jaipur Vidyut Vitran Nigam Ltd. v. Dy. CIT [2009] 123 TTJ (Jp. Trib). In this case the assessee was a electricity distribution company paid charges to transmission company as operation and maintenance of transmission line which according to the court did not result in any technical service mg rendered to the assessee.

In ITO vs. Fino Fintech Foundation [2016] 71 taxmann.com 224/159 ITD 743 (Mum. Trib.) it was held that the assessee company was providing banking services in extreme rural areas through its network of agent by use of device called point of transaction machine. It has incurred expenses on annual maintenance charges, enrolment charges, POT user charges which the Tribunal held that since there was no specific skill required to provide the said services the provisions of section 194J were not applicable.

> In the instant appeal the facts are at variance with those appearing in the ratio of the case laws quoted by the appellant. Under no circumstances the payments made by the appellant can be called job work charges as they are payments made on account of professional and technical fees to professionals who possess computer skills for working on customized software and have the requisite competence for adhering to the changes in examination patterns, recruitment procedures and printing of question papers and admit cards. No recruitment body, especially a government organization, which makes selection of candidates through the system of conducting competitive examination will assign the above work of preparing examination material to non-professional and technical agencies as mere job work. The difference in tax rates worked out by the AO between 194C and 194J of the Act along with the applicable interest on the period of default in the order u/s 201(1) r.w.s. (1A) of the Act is confirmed.
>
> In the result the appeal is dismissed."

9. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

10. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

11. Controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the assessee was obligated to deduct tax at source on the payments made to the processing agency for the services rendered by it, viz. tabulation, checking and preparation of marksheets etc., which involved usage of computers and online

services u/s.194J of the Act? Before proceeding any further, I deem it fit to cull out the provisions of Section 194J of the Act, which, reads as under:

> "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
>
> 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 **[***two per cent of such sum in case of fees for technical services (not being a professional services) or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent of such sum in other cases,***]** 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 **[***one crore rupees in case of business or fifty lakh rupees in case of profession***]** 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:

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."

(emphasis supplied by me)

On a perusal of the aforesaid statutory provision, it transpires that the same, inter alia, saddles a statutory obligation on an assessee to deduct tax at source on any sum paid to a resident towards “fees for professional services”. In so far the term “professional services” is concerned, the meaning/definition of the same can be traced in the “Explanation” (a) to Section 194J of the Act, which reads as under:

> “(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.”

Considering the services which would fall within the meaning of the “professional services”, the scope of the said term can be culled out as under:

Under explanation (a) to Section 194J, the term ‘professional services' means-			
(a)		Services rendered by a person in the course of carrying on any of the following professions:	
		Legal profession	
		Medical Profession	
		Engineering profession	
		Architectural profession	
		Profession of accountancy	
		Profession of interior decoration	
(b)		Services rendered by a person in the course of carrying on any notified procession. The professions notified in this regard so far are as follows:	

(i)		(i) 'Authorised representative' i.e., a person who represents any other person, on payment of any cee or remuneration before any tribunal or authority constituted or appointed by or under any law for the time being in force but does not include an employee of the person so represented or a person carrying on legal profession or a person carrying on the profession of accountancy.	
(ii)		'Film artist' i.e., any person engaged in his professional capacity in the production of a cinematograph film, whether produced by him or by any other person, as—	
	(a)	an actor;	
	(b)	a cameraman;	
	(c)	a director including an assistant director;	
	(d)	a music director including an assistant music director;	
	(e)	an art director including an assistant art director;	
	(f)	a dance director including an assistant dance director;	
	(g)	an editor;	
	(h)	a singer;	
	(i)	a lyricist;	
	(j)	a story writer;	
	(k)	a screenplay writer;	
	(l)	a dialogue writer; and	
	(m)	a dress designer.	
(iii)		Profession of company secretary-For this purpose, a 'company secretary' means a person who is a member of the Institute of company Secretaries of India in practice within the meaning of Section 2(2) of the Company Secretaries Act, 1980.	
	(iv)	Profession of Information technology	
	(v)	Sports persons	
	(vi)	Umpires and Referees	
	(vii)	Coaches and Trainers	Vide Notification No.2085(E), dated 21-8-2008
	(viii)	Team Physicians and Physiotherapists	
	(ix)	Event Managers	
	(x)	Commentators	

	(xi)	Anchors	
	(xii)	Sports Columnists	

12. Although both the lower authorities are of the view that the services rendered by the processing agency to the assessee, viz. tabulation, checking and preparation of marksheets etc., which involved usage of computers and online services, being in the nature of "professional services" would fall within the realm of Section 194J of the Act, but I am unable to persuade myself to concur with the same. On a perusal of the specific services which have been brought within the meaning of "professional services" under Explanation (a) to Section 194J of the Act r.w. Notification No.2085(E), dated 21.08.2008, I am unable to comprehend as to how the aforesaid services received by the assessee from the processing agency, viz. tabulation, checking and preparation of marksheets by using computers and online services could be brought within the scope and gamut of the provisions of Section 194J of the Act. Although, the A.O had emphasized that as the processing agency had provided its services to the assessee by deploying its computers and software, therefore, the same would suffice for bringing the same within the meaning of "professional services" as contemplated in Section 194J of the Act, I am unable to concur with the view so taken by him. As stated by the Ld. AR, and, rightly so, as on date rendering of almost every service would involve,

more or less, usage of computers and internet facilities. On the standalone basis that the processing agency had rendered services to the assessee by deploying computers /internet services, there can be no justification for dubbing the same as “professional services”. Also, I find substance in the claim of the Ld. AR that as the very nature of services, i.e., tabulation, checking and preparation of marksheets etc. provided by the processing agency to the assessee, though involving usage of computers and internet services, would not require any professional skill or expertise, therefore, the same cannot be brought within the realm of “professional services" as contemplated u/s.194J of the Act. Apart from that I also concur with the Ld. AR that a work/service in order to fall within the present meaning of the term “professional services” under consideration, would not only require that the provider of the services must possess a professional degree, but also that the same falls within the meaning of the services that either finds a specific mention in the meaning of the term “professional services” as contemplated in the “Explanation (a)” to Section 194J of the Act; or is in the nature of a profession as is notified by the CBDT either for the purpose of Section 44AA of the Act or Section 194J of the Act. Nothing is either discernible from the orders of the lower authorities, nor has been brought to my notice by the ld. DR which would reveal that the services in question rendered by the processing

agency falls within the meaning of the term “professional services" as contemplated in the “Explanation (a)” to Section 194J of the Act. On the contrary, as observed by me hereinabove, it has been the claim of assessee before the lower authorities that as the processing agency had not rendered any specified professional services to the assessee, therefore, the same could not have been brought within the meaning of “professional services” for the purpose of saddling the assessee with the statutory obligation of deducting tax at source u/s 194J on the payments made to the processing agency.

13. Adverting to the scope of the term “technical consultancy” that had, inter alia, been used in the meaning/definition of “professional services” provided in the “Explanation (a)” to Section 194J of the Act, the same, in my considered view, can be brought into play only when technology or technical knowledge of a person is made available to others, and not only for the reason that services are rendered to others by using technical systems. The aforesaid view is supported by the order of the ITAT, Jaipur in the case of Jaipur Vidyut Vitran Nigam Ltd. Vs. Dy. CIT (2009) 123 TTJ 888 (Jaipur). In the said case the Electricity Distribution company had paid charges to a transmission company, inter alia, for operation and maintenance of transmission lines and usage of the said lines by the assessee for transmitting energy. Although, the department had brought the said services within

the meaning of "technical consultancy", but on appeal the Tribunal observed that as no technical services were rendered to the assessee, therefore, no obligation was cast upon the assessee to deduct tax at source u/s.194J of the Act. Also, a similar view was taken by the ITAT, Mumbai in the case of ITO Vs. Fino Fintech Foundation, 159 ITD 743 (Mum-Trib), wherein it was observed that the provision of section 194J would be applicable only, if any, managerial, technical or consultancy services were provided to the assesee and a mere use of technology would not suffice to bring the same within the sweep of the said services. Observing, that as no specific skill was required to provide the service in the case before them which could be held in the nature of managerial, technical or consultancy services, the Tribunal was of the view that a mere use of the technology would not suffice for concluding that technical services were provided.

14. Considering the issue in hand in a broader perspective, the Hon'ble High Court of Madras in the case of Skycell Communications Ltd. Vs. DY. CIT (2001) 251 ITR 53(Mad.) had observed, that payment made for using of standard facilities by the public at large, in which some form of 'technical service' is inherent would not be covered u/s.194J of the Act. For the sake of clarity, the relevant observation of the Hon'ble High Court is culled out as under:

> "Section 194J, was not intended to cover the charges paid by the average house-holder or consumer for utilising the products of modern technology, such as, use of the telephone fixed or mobile, the cable T. V., the internet, the automobile, the railway, the aeroplane, consumption of electrical energy, etc. Such facilities which when used by individuals are not capable of being regarded as technical service cannot become so when used by firms and companies. The facility remains the same whoever the subscriber may be-individual, firm or company. "Technical service" contemplates rendering of a "service" to the payer of the fee. Mere collection of a "fee" for use of a standard facility provided to all those willing to pay for it does not amount to the fee having been received for technical services."

On the basis of the aforesaid observation, it was held by the Hon'ble High Court that Section 194J will be attracted only in cases where as person engages a technician or technocrat for rendering specified technical services, or engages a specified professional for rendering professional services.

15. On the basis of my aforesaid observations, I am of the considered view that the services rendered by the processing agency to the assessee, i.e., tabulation, checking and preparation of mark sheets and other computer assisted work could not have been brought within the meaning of "professional services" as contemplated in "Explanation (a)" of Section 194J of the Act.

16. Adverting to the observations of the lower authorities that as the nature of work executed by the processing agency would require professional skill and expertise, therefore, the same on the said count

could safely be brought within the meaning of "professional services", I am afraid the same does not find favour with me. As observed by me hereinabove, the term "professional services" had been specifically defined in "Explanation (a)" of Section 194J of the Act. On a perusal of the aforesaid definition, it transpires that the same either refers to certain specified services, i.e., 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. To sum up, the services in order to fall within the meaning of "professional services" for the purpose of triggering the provisions of Section 194J of the Act, are either to be those which finds a specific mention in the "Explanation (a)" of the said section; or had been notified by the CBDT either for the purpose of Section 44AA or Section 194J of the Act.

17. As observed by me at length hereinabove, there is nothing which would persuade me to conclude that the services rendered by the processing agency, i.e., tabulation, checking and preparation of mark sheets, though involving use of computers and online services, can either be traced in the specified services as mentioned in the "Explanation (a)" of Section 194J; nor in those that have been notified

by the CBDT for the purpose of Section 44AA or Section 194J of the Act. Also, the Ld. DR could not take us through any such notification (supra) wherein the services under consideration were found to be notified. Apart from that, I find substance in the contention of the Ld. AR that as rendering of the aforesaid services would not require any professional skill or expertise, much the less any professional degree on the part of the service provider, therefore, the same clearly takes the same beyond the scope and gamut of the definition/meaning of the term "professional services" as envisaged in Section 194J of the Act. I have even otherwise approached the issue in hand independent of the aforesaid technical intricacies, and is of the considered view that as the very nature of the services rendered by the processing agency, i.e., tabulation, checking and preparation of marksheets and other computer assisted work would not require any specific professional skill or expertise, therefore, it is difficult to comprehend as to how it would find a place within the meaning of "professional services" as envisaged in the "Explanation (a)" of Section 194J of the Act. In case, if a view to the contrary is taken, then all the services rendered by any agency by deploying computers/internet services, irrespective of the fact that the same would not require any professional skill or expertise would have to be categorized as "professional services". Considering my aforesaid observations, wherein neither I am able to concur with

the view taken by the lower authorities that the services rendered by the processing agency requires any professional expertise or skill, much the less those specified in "Explanation (a)" of Section 194J, AND also is unable to persuade myself to conclude that the services in question could be brought within the meaning of "technical consultancy" [as forms part of the definition of "professional services" in Explanation (a) of Section 194J], therefore, the same in my considered view could not have been brought within the meaning of Section 194J of the Act. On the basis of my aforesaid observations I set-aside the order of the CIT(Appeals) to the extent he had concluded that the assessee was liable to deduct tax at source on the payments made to the processing agency u/s.194J of the Act.

18. As I have concluded that the services rendered by the processing agency, i.e., tabulation, checking and preparation of mark sheets and other computer assisted work provided to the assessee could not be brought within the meaning of "professional services", and thus, the assessee could not have been saddled with any obligation to deduct tax at source on the payments made to the processing agency u/s.194J of the Act, therefore, I refrain from adverting to and therein adjudicating the other contentions that have been advanced by the Ld. AR, which, thus, are left open.

19. In the result, appeal of the assessee in ITA No.21/RPR/2020 for the A.Y.2012-13 is allowed in terms of the aforesaid observations.

ITA Nos. 22 to 27/RPR/2020
A.Y. 2013-14 to 2018-19

20. As the facts and the issues involved in the present appeals of the assessee remains the same as were there before me in its aforementioned appeal in ITA No.21/RPR/2020 for assessment year 2012-13, therefore, my order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off all the captioned appeals i.e. ITA Nos.22 to 27/RPR/2020 for the assessment years 2013-14 to 2018-19. In these cases also, I set aside the orders of the CIT(Appeals) on similar terms and observations as were recorded in ITA No.21/RPR/2020 for A.Y.2012-13.

21. In the result, appeals of the assessee in ITA No.22 to 27/RPR/2020 for the A.Ys.2013-14 to 2018-19 are allowed in terms of the aforesaid observations.

22. In the combined result, all the captioned appeals of the assessee are allowed in terms of the aforesaid observations.

Order pronounced in open court on 25th day of November, 2022.

Sd/-
(**रवीश सूद /RAVISH SOOD**)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 25th November, 2022

***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals), Raipur (C.G.)
4. The Pr. CIT (TDS), Bhopal (MP)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**एक-सदस्य**" बेंच, **रायपुर** / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur.