

IT: Where assessee-company, engaged in business of Information Technology/Information Technology enabled services, entered into an agreement with TCS for creation of Geographical Information Systems, in view of fact that in order to carry out work under said contract assessee outsourced non-technical work such as collection of data to various contractors, said work being in nature of 'works contract', assessee was justified in deducting tax at source under section 194C

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[2018] 94 taxmann.com 14 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'L'

Assistant Commissioner of Income-tax (LTU)-1, Mumbai

v.

WTI Advance Technology Ltd.*

B.R. BASKARAN, ACCOUNTANT MEMBER

AND RAVISH SOOD, JUDICIAL MEMBER

IT APPEAL NO. 1656 (MUM.) OF 2016

[ASSESSMENT YEAR 2012-13]

MAY 11, 2018

Section [194C](#), read with section [194J](#), of the Income-tax Act, 1961 - Deduction of tax at source - Contractors/sub-contractors, payments to (Works contract) - Assessment year 2012-13 - Assessee-company was engaged in business of Information Technology/Information Technology enabled services - It entered into an agreement with TCS for creation of Geographical Information Systems - Nature of work involved in execution of aforesaid projects involved both technical and non-technical work - Technical work was performed by assessee with its employees who were technical personnel, and non-technical/non-skilled work involving collection of data, etc., was outsourced by assessee to various vendors in relevant locations for operational convenience - Assessee made payments to contractors after deducting tax at source under section 194C - Assessing Officer opined that payments made by assessee were in context of technical services, therefore, it was liable to deduct tax at source under section 194J - It was noted that work carried out by vendors included field survey of collection of names of major roads/base map features; collection of names/attributes of assets data from ledgers available with utility companies and collection of consumer data through door-to-door survey etc. - Whether in view of fact that aforesaid work executed by vendors/contractors did not involve and technical skill or industrial science, same would clearly fall in category of 'works contract' and, thus, assessee was justified in deducting tax at source under section 194C while making payments to said contractors - Held, yes [Para 9] [In favour of assessee]

FACTS

- The assessee-company was engaged in the business of Information Technology/Information Technology enabled services. It entered into an agreement with TCS for creation of Geographical Information systems. The nature of work

involved in the execution of the aforesaid projects involved both technical and non-technical work. The technical work was performed by the assessee with its employees who were technical personnel, and the non-technical/non-skilled work involving the collection of data, etc. was outsourced by the assessee to various vendors in the relevant locations for operational convenience.

- The assessee made payments to contractors after deducting tax at source under section 194C.
- The Assessing Officer opined that payments made by the assessee were in context of technical services, therefore, it was liable to deduct tax at source under section 194J and not under section 194C. He thus made proportionate disallowance under section 40(a)(ia) for short deduction of tax at source.
- The Commissioner (Appeals), however, taking a view that services rendered by contractors being non-technical in nature and falling under category of works contract, deleted disallowance made by Assessing Officer.
- On revenue's appeal:

HELD

- It is found that TCS had entered into an agreement with the assessee-company for creation of Geographical Information system in the State of Maharashtra and Gujarat. As observed by the Commissioner (Appeals), the execution of the project involved both technical and non-technical work. Though the technical work was performed by the assessee through its employees who were technical personnel, but however, the non-technical and non-skilled work involving the collection of data etc. was outsourced by the assessee to various vendors in the relevant locations for operational convenience. The nature of such non-technical and supporting work that was outsourced by the assessee to the various vendors, involved the field survey for collection of names of major roads/base map features; collection of names/attributes of assets data from ledger available with utility companies; collection of consumer data through contact survey by door-to-door survey etc. The nature of such work which was provided by the vendors included DGPS Survey for GCP collection; field survey and mapping; indexing etc.
- The observations of the Commissioner (Appeals) that though the terminology used in the agreement such as 'Technical audit of Distribution Transformer' would at the first blush give an impression that the same involved rendering of certain complex technical services by the vendor, but however, the same revealed the basic work of taking photographs of the transformers is correct. The view taken by the Commissioner (Appeals) that the activities performed by the vendors did not require any technical or professional knowledge, and the vendors had only deployed semi-skilled personnel to carry out the said work is correct.
- In this regard it would be relevant to point out that during the course of the hearing of the appeal neither any material, nor any such contention was advanced by the revenue which could persuade one to conclude that the aforesaid observations of the Commissioner (Appeals) being perverse and contrary to the facts available on record, were thus liable to be dislodged. The observations of the Commissioner (Appeals) that the Assessing Officer had relied mainly on the agreement and not on the actual work carried out by the vendors had also not been controverted by the department.

- The nature of the non-technical and supporting work carried out by the vendors *i.e.* (i) field survey of collection of names of major roads/base map features; (ii) collection of names/attributes of assets data from ledgers available with utility companies; and (iii) collection of consumer data through contact door-to-door survey etc. did not require any technical skill. Carrying out the aforesaid work by the unskilled and semi skilled labourers, no technical skill or industrial science would be involved. The work executed by the vendors could safely be brought within the sweep of 'carrying out any work through supply of labour' as contemplated in section 194C. The view taken by the Commissioner (Appeals) that as the payments made to the vendors for the work done by them by deploying semi-skilled personnel, did not involve any technical or professional knowledge on their part, the same could not be brought within the sweep of section 194J and had rightly been subjected to deduction of tax at source by the assessee under section 194C.
- The assessee had correctly deducted tax at source on the payment made to the vendors, therefore, no disallowance under section 40(a)(ia) as regards the same was liable to be made in the hands of the assessee. There is no infirmity in the order of the Commissioner (Appeals), and the same is upheld. [Para 8]
- The appeal of the revenue is thus dismissed. [Para 10]

CASES REFERRED TO

Asstt. CIT v. Pankaj Bhargava [2013] 33 taxmann.com 484 (Delhi - Tri.) (para 6), *Gujarat State Electricity Corpn. Ltd. v. ITO* [2004] 3 SOT 468 (Ahd.) (para 6), *ITO v. Man Foods (P.) Ltd.* [IT Appeal No. 7150 (Mum.) of 2012] (para 6) and *CIT v. S.K. Tekrimal* [2014] 46 taxmann.com 444/361 ITR 432 (Cal.) (para 8).

Samuel Darse, D.R. for the Appellant. **Rajan Vora** and **Nikhil Tiwari, Ars.** for the Respondent.

ORDER

Ravish Sood, Judicial Member - The present appeal filed by the revenue is directed against the order passed by the CIT(A)-11, Mumbai, dated 27.01.2016, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income tax Act, 1961(for short 'Act'), dated 06.03.2015 for A.Y 2012-13. The revenue had raised before us the following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the payment made to the parties/contractors were subject to deduction of tax u/s 194C instead of section 194 J as held by the AO, ignoring the clear terminology and scope of work of the contracts entered into by the assessee with the parties/contractors.
2. The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the Assessing Officer restored.
3. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of Information Technology/Information Technology enabled services had filed its return of income for A.Y. 2012-13 on 29.09.2012 admitting total income of Rs. 5,59,38,540/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. The case of the assessee was subsequently taken up for scrutiny assessment under Sec. 143(2).

3. The facts involved in the case lies in a narrow compass. The assessee company is engaged in the business of Information Technology/Information Technology enabled services. The Ministry of Power, Government of India under XI Five year plan had initiated Restructured Accelerated Power Development and Reforms Programme (for short 'R-APDRP') with an overall programme objective to provide an IT backbone and strengthening of the Electricity Distribution System across the Country, which enabled utilities in reduction of AT &C losses to 15% in project areas. The aforesaid work was to be executed in various States and for the State of Maharashtra and Gujarat Tata Consultancy services (for short 'TCS') was awarded with this project. The agreement had various modules and in turn TCS had entered into an agreement with the assessee company for creation of Geographical Information systems (for short 'GIS').

4. The nature of work involved in the execution of the aforesaid projects involved both technical and non-technical work. The technical work was performed by the assessee with its employees who were technical personnel, and the non technical/non skilled work involving the collection of data, etc was outsourced by the assessee to various vendors in the relevant locations for operational convenience. The non technical and supporting work involved the following activities:

Field survey for collection of names of major roads/base map features.

Collections of names/attributes of assets data from ledgers available with utility companies.

Collection of consumer data through contact survey by door to door step survey etc.

The assessee as observed by us hereinabove, for carrying out the non-technical work had engaged third party contractors (hereinafter referred to as 'Vendors') to whom payments were made after deduction of tax at source under Sec. 194C at the rate of 2%/1%, respectively. The aforementioned expenses were accounted and grouped by the assessee as Survey Expenses in its Profit and loss account for the year under consideration. The assessee had during the year incurred an amount of Rs. 17,50,36,140/- towards such survey expenses.

5. During the course of the assessment proceedings, the A.O observed that the assessee had deducted tax at source on the aforesaid survey expenses of Rs. 17,50,36,140/- under Sec. 194C of the Act. The A.O holding a conviction that as the payments made by the assessee were in context of technical services, therefore, it was liable to deduct tax at source under Sec.194J and not under Sec. 194C of the Act. The explanation of the assessee that the work carried out by the vendors could not be characterised as technical services and thus did not fall within the sweep of Sec.194J, however did not find favour with the A.O. The A.O being of the view that the assessee ought to have deducted tax at source under Sec.194J of the Act disallowed proportionate amount of Rs. 15,75,32,526/- under Sec. 40(a)(ia) of the Act.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The assessee submitted before the CIT(A) that the work carried out by the vendors did not fall within the ambit of technical services defined under Sec.194J, and was rather squarely covered by category of works contract defined under Sec. 194C of the Act. It was submitted by the assessee that the provisions of Sec. 194C of the Act stated that the contract should be for "carrying out any work" or "carrying out any work through supply of labour". It was submitted by the assessee that as the activities performed by the third party vendors did not involve any technical or professional knowledge, and rather they had deployed only semi skilled resources with ITI or Standard X/XII educational qualification, therefore, it was incorrect on the part of the A.O to conclude that the payments made to the said vendors were in context of technical services rendered by them. The assessee further submitted before the CIT(A) that as a matter of fact the A.O had relied only on the terms of the contract between the assessee and the third party vendors and had not

verified the nature of services rendered by them. Rather, it was the contention of the assessee that the A.O has gone only by the form of the agreement without considering the substance of the same. It was brought to the notice of the CIT(A) that the activities performed by the unskilled or semi-skilled labourers deployed by the vendors did not involve any application of industrial science and was only in the nature of collecting data from the door-to-door of each household, data entry of such collected data and submitting the same to the local utility offices, and the same did not involve any technical knowledge. The assessee in order to drive home his aforesaid contention that the payments made to the vendors did not involve any technical services, took support of the fact that one of the vendor, viz. M/s Petro IT Private Ltd. had obtained a certificate for lower deduction of tax at source under Sec. 197 of the Act from the Income Tax Officer, TDS Ward-51(1), Delhi, wherein the latter had accepted that the work done by the said vendor was only contractual in nature. The assessee in order to fortify its aforesaid claim that services involving collection of data from door to door, data entry of such collected data and submitting the same to the local head offices involved only semi skilled labour and did not partake the colour and character as that technical services, relied on the following orders of the coordinate benches of the Tribunal:

- (i) *Asstt. CIT v. Pankaj Bhargava* [\[2013\] 33 taxmann.com 484 \(Delhi - Tri.\)](#)
- (ii) *Gujarat State Electricity Corpn Ltd. v. ITO* [\[2004\] 3 SOT 468 \(Ahd.\)](#)
- (iii) *ITO v. Man Foods (P.) Ltd.* [IT Appeal No. 7150 (Mum.) of 2012]

7. The CIT(A) after deliberating on the contentions of the assessee so raised before him in the backdrop of the order passed by the A.O, did find favour with the same. The CIT(A) observed that the A.O while concluding that the assessee ought to have deducted tax at source under Sec.194J and not under Sec.194C, had as a matter of fact relied mainly on the agreement and not on the actual work involved. It was observed by the CIT(A) that though the terminology used in the agreement such as 'technical audit of distribution transformer' though at the first blush would give a feeling that the same involved some complex technical services, but however, the same as a matter of fact actually referred to taking photographs of transformers. It was observed by the CIT(A) that the nature of work carried out by the vendors involved door-to-door collection of consumer data and painting of asset number on the electrical polls. The CIT(A) further observed that the assessee had engaged vendors with manpower who were not technically qualified. The CIT(A) after consulting the documents which were placed on record by the assessee before him, viz. invoices, nature of work done, pictorial representation with items of work involved in the contract etc., was persuaded to subscribe to the claim of the assessee that the vendors had not rendered any technical services which would have made it obligatory on its part to have deducted tax at source under Sec. 194J of the Act. The CIT(A) on the basis of his aforesaid deliberations concluded that the work carried out by the vendors did not fall within the ambit of technical services contemplated under Sec. 194J, and rather was clearly in the nature of contract work provided in Sec. 194C of the Act. Besides, the appellate authority was also convinced that as the activities carried out by the vendors did not require any technical and professional knowledge, thus they had only deployed semi-skilled personnel for carrying out the said work. The CIT(A) on the basis of his aforesaid observations concluded that the assessee had rightly deducted tax at source under Sec. 194C of the Act.

8. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') relied on the order passed by the A.O. It was submitted by the Id. D.R that as the vendors had rendered technical services to the assessee, therefore, as observed by the A.O, the assessee remained under a statutory obligation to have deducted tax at source under Sec. 194J of the Act. It was the contention of the Id. D.R that as the assessee had failed to deduct tax at source as per the appropriate rates contemplated in chapter XVIIB, therefore, the same had rightly been disallowed by the A.O under Sec.40(a)(ia) of the Act. The Id. Authorized Representative (for short 'A.R') at the very outset of the hearing of the appeal took us through the facts of the case at Page 3-Para

6 of the CIT(A) order. It was submitted by the Id. A.R that the nature of work carried out by the vendors on behalf of the assessee was the subject matter of dispute in the present appeal. It was averred by the Id. A.R that the CIT(A) had rightly observed that as no technical services were involved in the work done by the vendors by deploying semi-skilled labourers, therefore, the assessee had rightly deducted tax at source under Sec. 194C and the provisions of Sec. 194J were not attracted. The Id. A.R further averred that even otherwise the provisions of Sec. 40(a)(ia) could not have been invoked in respect of short deduction of tax at source. In support of his aforesaid contention the Id. A.R relied on the judgment of the Hon'ble High Court of Calcutta in the case of *CIT v. S.K. Tekrimal* [\[2014\] 46 taxmann.com 444/361 ITR 432](#).

9. We have perused the facts of the case and find that TCS had entered into an agreement with the assessee company for creation of Geographical Information system in the State of Maharashtra and Gujarat. As observed by the CIT(A), the execution of the project involved both technical and non-technical work. Though the technical work was performed by the assessee through its employees who were technical personnel, but however, the non-technical and non-skilled work involving the collection of data etc. was outsourced by the assessee to various vendors in the relevant locations for operational convenience. The nature of such non-technical and supporting work that was outsourced by the assessee to the various vendors, involved the field survey for collection of names of major roads/base map features; collection of names/attributes of assets data from ledger available with utility companies; collection of consumer data through contact survey by door-to-door survey etc. We have perused the scope of work carried out by the vendors, as can be gathered from the relevant extracts of the 'agreement' between the assessee and the vendors reproduced in the body of the assessment order. The nature of such work which was provided by the vendors included DGPS Survey for GCP collection; field survey and mapping; indexing etc. We are persuaded to be in agreement with the observations of the CIT(A) that though the terminology used in the agreement such as "Technical audit of Distribution Transformer" would at the first blush give an impression that the same involved rendering of certain complex technical services by the vendor, but however, the same revealed the basic work of taking photographs of the transformers. We find ourselves to be in agreement with the view taken by the CIT(A) that the activities performed by the vendors did not require any technical or professional knowledge, and the vendors had only deployed semi-skilled personnel to carry out the said work. In this regard it would be relevant to point out that during the course of the hearing of the appeal neither any material, nor any such contention was advanced by the Id. D.R which could persuade us to conclude that the aforesaid observations of the CIT(A) being perverse and contrary to the facts available on record, were thus liable to be dislodged. We may further observe that the observations of the CIT(A) that the A.O had relied mainly on the agreement and not on the actual work carried out by the vendors had also not been controverted by the department before us. We may herein observe that the fact as averred by the assessee before the CIT(A) that one of the contractor, *i.e.* M/s Petro IT Pvt. Ltd was issued a certificate for deduction of tax at lower rate under Sec. 197 of the Act by the Income Tax officer, TDS Ward 51(1), Delhi in respect of the contract work, further supports the claim of the assessee that the revenue itself had accepted that the work done by the vendors was contractual in nature. We find that as observed by the CIT(A) the nature of the non-technical and supporting work carried out by the vendors *i.e.* (i) field survey of collection of names of major roads/base map features; (ii) collection of names/attributes of assets data from ledgers available with utility companies; and (iii) collection of consumer data through contact door-to-door survey etc. did not require any technical skill. We are of the considered view that for carrying out the aforesaid work by the unskilled and semi-skilled labourers, no technical skill or industrial science would be involved. We have given a thoughtful consideration to the facts before us and are of a strong conviction that the work executed by the vendors could safely be brought within the sweep of "carrying out any work through supply of labour" as contemplated in Sec. 194C of the Act. We are persuaded to be in agreement with the view taken by the CIT(A) that as the

payments made to the vendors for the work done by them by deploying semi-skilled personnel, did not involve any technical or professional knowledge on their part, the same could not be brought within the sweep of Sec. 194J and had rightly been subjected to deduction of tax at source by the assessee under Sec. 194C. We thus being of the view that the assessee had correctly deducted tax at source on the payment made to the vendors, therefore, no disallowance under Sec.40(a)(ia) as regards the same was liable to be made in the hands of the assessee. We thus finding no infirmity in the order of the CIT(A), uphold the same in context of the issue under consideration. Before parting, we may herein observe that the revenue had assailed before us the order of the CIT(A) only to the extent he had observed that the payments made to the vendors were to be subjected to deduction of tax at source under Sec.194C and not under Sec. 194J of Act. Resultantly, as the observations of the CIT(A) in context of the other reasons on which the disallowance under Sec. 40(a)(ia) made by the A.O had been struck down by him had not been assailed before us by the revenue, therefore, we refrain from adverting to the same. The Ground of appeal No. 1 raised by the revenue is dismissed in terms of our aforesaid observations.

9.1 The Grounds of appeal No. 2 and 3 being general in nature, are dismissed as not pressed.

10. The appeal of the revenue is dismissed in terms of our aforesaid observations.

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*In favour of assessee.