आयकर अपीलीय अधिकरण, मुंबई "सी" खंडपीठ मे

Income-tax Appellate Tribunal -"C"Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member

आयकर अपील सं./I.T.A./2710/Mum/2015,**निर्धारण वर्ष /**Assessment Year: 2012-13

M/s. Coimbatore Integrated Waste Management Company Pvt.Ltd. No.4, (Old No.36), 3rd Street, Maheshwari Nagar Thaneerpndal Road, Peelamedu,Coimbatore-4 **PAN:AAFCA9502R**	Vs.	DCIT-TDS, Circle 63-A, Race Course Road Coimbatore.
(अपीलार्थी **/Appellant**)		(प्रत्यर्थी **/ Respondent)**

राजस्व की ओर से **/ Revenue by:** Shri Rajat Mittal-DR

अपीलार्थी की ओर से **/Assessee by:** S/Shri Sumant Chadha/Jitendra Trivedi

सुनवाई की तारीख **/ Date of Hearing: 11/12/2017**

घोषणा की तारीख **/ Date of Pronouncement: 01.03.2018**

लेखा सदस्य, राजेन्द्र के अनुसार /PER RAJENDRA, AM-

Challenging the order dated 14/1/2015 of CIT(A)-50 Mumbai,the assessee has filed the present appeal.

2.The solitary Ground of appeal is about deduction of tax at source.During the year under consideration,the assessee filed an application u/s. 197 of the Act,seeking a certificate for Nil deduction of tax at source.While processing the application, the Assessing Officer (AO) noticed that it had made certain payments to M/s.UPL Environmental Engineers Ltd.(UEEL) on which tax had been deducted at the rates applicable u/s. 194C and not u/s.194J.An inspection was carried out on 19/3/2013 to verify the nature of services rendered by the deductee.He called further details in that regard.While going through the details,he observed that payment made to UEEL was in the nature of technical services. A notice,dated 11/06/ 2013,was issued to the assessee for collection of the shortfall in deduction and for treating the payment as payment for technical services.In response to the said notice,the assessee submitted that it was liable to tax deduction at source @2% being rate applicable to contract payment.However,the AO did not accept the submission of the assessee and held that the assessee's contention that its relationship with UEEL was on principal to principal basis was not correct,that an agreement,dtd.19/11/2007,was entered between the Coimbatore Municipal Corporation(CMC)and a Consortium,that the said agreement laid down the conditions, methodology for providing an integrated Municipal Solid Waste Management project comprising of transfer stations,secondary transportation processing facility, engineered land fill facility through public private participation, that on 01/10/2010 an agreement was entered

between the assessee and UEEL for carrying out some aspects of the work relating to the manufacture of organic manure/compost and disposal of the residue,that CBDT Circular No. 715,dtd. 08/08/1995,dealt with payments made towards advertisements and did not lay down any general Rule that section 194C would be applicable in all cases, that the assessee had outsourced a part of the composite contract which required technical expertise,that the assessee had to deduct tax as per the provisions of section 194J of the Act. Accordingly he worked out TDS at Rs.54.18 lakhs for the period of 01/04 2011 to 31/3/2012 and charged interest u/s.201(1A) amounting to Rs.12.84 lakhs resulting in a demand of Rs.66.03 lakhs.

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA)and made detailed submissions.It also relied upon certain case laws. After considering the available material,he held that the basic issue to be decided was as to whether the contract between the assessee and UEEL was a work contract or a service contract.He referred to the case of Bharti Cellular Ltd.(319ITR139)and held that word 'techni -cal services' had to be read in narrower sense,that the words technical services in section 9 (1)(vii) r.w. Explanation 2 would appear between the words managerial and consultancy services,that the AO had reproduced certain portions of the agreement to hold that the nature of contract was technical-service-contract, that the assessee had argued that there was no human element and that the work was carried out by machines,that a careful study of agreements revealed that the projects required mechanical and human intervention, that the processing of solid waste was done with the help of machinery,that specialists had to monitor the process for strict environment compliance,that there was a human interface in the entire contract work,that the compost produced had to be certified by authorised persons,that conversion of MSW to solid fuel was to be certified by specialists, that landfill facility were to be looked after by a team that included by the chemist to take random sample from the heaps, that the project engineer had to oversee the random sampling, that the work involved strict quality control, environmental compliance, that it required assistance of technical people,that the assessee had stated,during the 201 proceedings ,that the services availed by UEEL from sub-contractors might involve services of professionals and technicians,that the nature of contract was of technical service contract,that the AO had rightly held that provisions of section 194J were applicable.

3.1. Referring to the case of Hindustan Coca-cola Beverages Pvt.Ltd.(293 ITR 226),the FAA held that the assessee had failed to establish that UEEL had paid due taxes on the sums paid by the assessee,that during the appellate proceedings it had filed details of TDS certificates ,

ledger copies and the first page of return of income to show that the sums paid by it to UEEL had been offered to tax,that it had failed to enclose the P&L account to verify as to whether the said income was included as profit in the return of income.Accordingly, he directed the AO to call for the books of the deductee company, i.e. UEEL and to verify as to whether the sums paid by the assessee were offered as income.He further observed that if the claim of the assessee was found to be correct the principles laid down by the judgments of Hon'ble Supreme Court in the case of Hindustan Cocacola Beverages (supra),would be applicable and accordingly no tax would be charged u/s.201(1)of the Act.He also held that interest chargeable u/s. 201(1A) would be applicable till the date of payment of taxes by UEEL.

4.During the course of hearing before us,the Authorised Representative(AR)stated that the assessee was not supplying any of the services of technical nature, that the services provided by it fell under works-contract.He referred to cases of Ruby Maacons Ltd. (ITA 4056/ Mum/ 2008-AY.2006-07,dtd.11/6/2010),Senior Manager (Fin.), Bharat Heavy Electricals Ltd. (390 ITR322),Gujarat Flurochemicals Ltd.(ITA/1956-8/Ahd/2012/),and Parsurampuria Synthetics Pvt.Ltd.(20SOT248). He further argued that the sub-contractor might be using technical help, that the assessee was not carrying out any technical service,that the sub contractor was not imparting technical knowledge to the assessee, that from Municipal Corporation the assessee got the contract, that it sub contracted the job (Pg-132 of the PB),that the work done by the assessee was for service contract.

The Departmental Representative (DR)supported the order of the revenue authorities and stated that contract was for managing of solid waste, that technical people were involved in the whole process, that technical services were made available to the assessee, that while giving effect to the order of the FAA the AO granted relief about the tax portion,that after rectification amount involved under litigation was Rs.4.64 lakhs i.e. interest levied u/s. 201 (1A) of the Act.

5.We have heard rival submissions and perused the material before us.We find that CMC had awarded a contract for solid waste management in 2007,that municipal corporation had deducted tax at source u/s.194C of the Act for the payments made to the assessee,that it had completed the execution of part of the project,that it had sub-contracted the operational and maintenance part of the main contract to UEEL,that the work was performed by UEEL under contractual obligation as per the requirements of the assessee and CMC.According to us,the agreement with UEEL was continuation of the original agreement entered into between CMC and the assessee.

The issue to be decided is as to whether the work carried out by the assessee would fall in the category of technical services as envisaged by the provisions of section 9 of the Act. Technical services means any consideration paid for the rendering of any managerial, technical or consultancy services.In the case under consideration no consultancy was provided by the sub contractor.Similarly it had not rendered any managerial services. The assessee had entered in to an agreement with the sub contractor and the sub contractor was carrying out certain jobs as required by CMC.But,it had not transferred any technical knowledge to the assessee.Thus,the first pre-condition of services being of Technical nature is not fulfilled.Secondly,use of machinery or some personnel by the sub contract will convert it to a case covered by the provisions of section 194 J of the Act.Here,we would like to refer to the case of Bharat Heavy Electrical Ltd.(supra).Facts of the case were that for the AY. 2012-13, a survey was conducted u/s.133A of the Act on the assessee.The AO found that the assessee had made payments to five contractors in respect of various contracts and deducted tax in respect thereof under section 194C at the rate of 2%. and paid to the Government treasury.He found that all the contracts involved the provision of professional and technical services which fell within the ambit of the provisions of section 194J and not u/s.194C.The AO held that the contracts were not only for the erection and installation work, but also for the commissioning,testing and trial operation of the various equipment and other related machinery and that under the terms of the contract it was the duty of the contractor to provide all types of labour,supervisors, engineers, inspectors, measuring and testing equipment, testing and commissioning for the execution of the project in accordance with the specifica - tions of the assessee.He held that the level of human intervention was high and sophisticated and accordingly held the assessee in default under section 201(1A) for having failed to deduct the tax at source and invoked the provisions of sections 200 and 201 read with rule 30 of the Income-tax Rules, 1962.The FAA held that the scope of the work given to the sub-contractors involved construction work, welding, erection, alignment, transportation of equipment and materials with the help of machines which did not fall within the scope of technical services as defined in Explanation 2 to section 9(1)(vii).He also held that merely because technical personnel were employed in the execution of the contract it did not follow that the contract was one for technical services.The Appellate Tribunal confirmed the findings of the FAA. Dismissing the appeal filed by the department,the Hon'ble High Court held as under:

> "*.....the contract entered into between the assessee and each of the contractors did not involve supply of professional or technical services at least within the meaning of section 194J of the Income-tax Act, 1961. Therefore, the considerations paid under the contracts were not for professional or technical services rendered by the contractors to the assessee*

> *and section 194J was not applicable. The technical personnel were deployed not for and on behalf of the customer, but for and on behalf of the contractor itself with a view to ensuring that the contractor supplied the equipment in accordance with the contractual specifications. The nature of human intervention was reflected in the terms and conditions of the agreement itself."*

From the above,it is clear that mere use of machinery or human intervention by the sub contractor are the decisive factors to decide the issue against the AO.We also hold that each and every payment for the contracts would not be for professional or technical services rendered by the contractor to the assessee as per the provisions of section 194J of the Act.The Hon'ble High Court has also held that Section 194J of the Act was not a residuary clause,that in other words,it was not that if a contract did not fall within the ambit of section 194C , it must be deemed to fall within the ambit of section 194J,that Sections 194C and 194J were independent provisions.

In the case of Gujarat Flurochemicals Ltd.(supra)the Tribunal has held that the collection, transportation and disposal of waste could be said to be covered under the provisions of section 194C of the Act. In the matter of Ruby Maacons Ltd. (supra) the issue involved was regarding the applicability of TDS provisions for payment made by the assessee to Vapi Waste and Effluent Management Company Ltd.(VWEMCL) for the treatment of waste generated at the time of manufacturing of chemicals.The assessee was directing tax as per the provisions of section 194C of the Act. The AO held that the aforesaid payments were FTS and tax was to be deducted as per section 194J of the Act. Deciding the appeal in favour of the assessee, the tribunal held as under:

> *"VWEMCL is running a treatment plan providing a standard facility and if any workforce is involved in maintaining the standard facility it cannot be said that a special scheme/knowledge was passed on by individuals to assessee in view of a specified fee. Such being the case, we are of the considered opinion that it cannot be considered as a payment in form of fee for technical services."*

We find that there was no direct and Livelink between the payment and receipt/use of technical services/information.In our opinion the AR head rightly argued that technical services would not include services provided by the machines.In the case of Parsurampuria Synthetic Ltd.(supra), the tribunal has held that there might be use of services of technically qualified person to render the services, that same would not bring the amount paid as fee for technical services within the meaning of explanation 2 to section 9 (1) (vii)of the Act.

Accordingly, we hold that payment made by the assessee to UEEL for exhibiting the work contract would fall within the provisions of section 194C of the Act and not under the section 194 J. Effective ground of appeal is decided in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.
फलतःनिर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 1st March, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 01 मार्च, 2018 को की गई।

Sd/-	**Sd/-**
(अमरजीत सिंह **/ Amarjit Singh**)	(राजेन्द्र **/ Rajendra**)
न्यायिक सदस्य **/ JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 01.03.2018.
Jv.Sr.PS.

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

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR "C " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**