

Sum paid to co. providing support services to assessee's rail equipment manufacturing activity liable to TDS u/s 194J

Summary – The Ahmedabad ITAT in a recent case of Bombardier Transportation India (P.) Ltd., (the Assessee) held that where assessee, engaged in manufacturing rail vehicles and coaches, made payments to 'CSCIPL' for rendering desktop, help desk, call centre, datacentre, network and application management services to support assessee's rail equipment manufacturing and services operation, said services being in nature of technical or professional services, required deduction of tax at source under section 194J and not under section 194C

Facts

- The assessee-company was engaged in manufacturing rail vehicles and coaches. It entered into an agreement with 'CSCIPL' to provide desktop, help desk, call centre, datacentre, network and application management services to support assessee's rail equipment manufacturing and services operation.
- The assessee made payments to 'CSCIPL' after deducting tax at source under section 194C.
- The Assessing Officer took a view that it was not a mere case of making contractual payments rather 'CSCIPL' had rendered technical or professional services requiring deduction of tax at source under section 194J.
- The Commissioner (Appeals) upheld the order of Assessing Officer.
- On second appeal:

Held

- The sole question comes up for consideration is whether or not assessee's impugned payments made to the payee "CSCIPL" already subjected to TDS deduct at the rate of 2 per cent; amount are to be treated as fee for technical services to be ascertained on the basis of their contractual terms only as incorporated in the bi-partite agreement in question. It is an undisputed fact that this "LSA" has been executed as per the Master Services Agreement "MSA" between assessee's parent and the very payee. MSA is basic foundation which nowhere forms part of the case file nor has the assessee placed it on lower authorities' record. The above following "LSA" aimed to regulate necessary terms of information technology and related services to be rendered by the payee in lieu of assessee's payments.
- The assessee is fair enough in not disputing the fact that it has not handled or operated even a fraction of services on its own throughout all these assessment years. It seeks to take refuge under the contractual format on the other hand to come out of rigour of section 194J of the Act. It is not the medium of contract or payment but the nature of services rendered by the payee which is the

crucial factor to determine whether or not they amount to technical or professional services. The assessee cannot succeed in treating its payments under section 194C by taking recourse to a written contract document. The assessee has not made even a single attempt in the course of hearing to rebut the same. It is observed that its recipient's information technology related integrated service activities amount to technical services only. The assessee's reliance on its itemized billings of the above services in classifying the same as bundled payments/services cannot be accepted in view of the forgoing discussion that it is the recipient only who is wholly responsible for handling / providing all information technology related services.

- Further, there is no merit in assessee's next argument of having acted in *bona fide* belief as well in deducting TDS at the rate of 2 per cent only *qua* its impugned payments as based on High Court's judgment in *Gwalior Rayon Silk Co. Ltd. v. CIT* [\[1983\] 14 Taxman 99](#) case. The above said facts/circumstances discussed leave no doubt much less formation of such relief that the payee "CSCIPL" had in fact rendered technical services only requiring TDS deduction under section 194J of the Act. Thus the lower authorities' findings holding that the payee has rendered technical and professional services are affirmed.
- In view of above, assessee's appeal is rejected.