

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO. 170 OF 2015
WITH
INCOME TAX APPEAL NO. 173 OF 2015**

The Commissioner of Income Tax (TDS)
Pune

.. Appellant

v/s.

Bajaj Allianz Life Insurance Co. Ltd.

.. Respondent

Mr. Tejveer Singh for the appellant
Ms. Vasanti B. Patel for the respondent

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.**

DATED : 1st AUGUST, 2017

P.C.

1. These appeals pertain to Assessment Years 2007-08 and 2008-09.

2. Mr. Singh, learned Counsel for the appellant submits that the Tribunal was not justified in law to hold that the provisions of Section 194J is not applicable in respect of the payments made to M/s. Valuefirst Messaging Pvt. Ltd. for providing SMS services as well as technical support services, more particularly, when the

service agreement between the assessee and M/s. Valuefirst Messaging Pvt. Ltd. provided for imparting training to a technical team designated by the assessee and further M/s. Valuefirst was entrusted with responsibility to ensure that the SMS service works in accordance with the agreed functionality / description and conforms to the stated service level agreement. The learned Counsel submits that the Tribunal has not properly considered the said aspect and has arrived at erroneous conclusion.

3. The learned Counsel for the respondent supports the judgment.

4. It has been observed by the Tribunal that M/s. Valuefirst Messaging Pvt. Ltd. is merely assisting the assessee in sending SMS messages to its customers. The preamble of the agreement between the assessee and M/s. Valuefirst Messaging Pvt. Ltd. itself describes that M/s. Valuefirst Messaging Pvt. Ltd. is a company engaged in providing mobile messaging solutions to carry data over mobile network using its mobility platform. There is no technical or professional services, which can be said to have been offered by

M/s. Valuefirst Messaging Pvt. Ltd. The judgment of the Apex Court in a case of *Director of Income Tax (International Taxation) V/s. A.P. Moller Maersk A/S reported in (2017) 392 ITR 186* and another judgment of the Apex Court in a case of *Commissioner of Income Tax Vs. Kotak Securities Ltd. reported in (2016) 383 ITR 1* has considered that such a service and charges paid, as not fees for technical services and no liability of direct tax of such liability arises.

5. In the light of the above, no substantial question of law arises. The appeals are dismissed. No costs.

(A.M. BADAR, J.)

(S.V. GANGAPURWALA, J.)