

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

**INCOME TAX APPEAL NO.604 OF 2017
WITH
INCOME TAX APPEAL NO.596 OF 2017
WITH
INCOME TAX APPEAL NO.612 OF 2017**

The Commissioner of Income Tax ... Appellant
V/s.

M/s Reliance Life Insurance Co. Ltd. ... Respondent

Mr.P.C.Chhotaray for the Appellant.

Mr.R.Murlidharan i/by M/s Rajesh Shah & Co. for the
Respondent.

**CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 10, 2019.**

P.C.:-

1. These three appeals filed by the revenue arise out of the common judgment of Income Tax Appellate Tribunal. For convenience, we may record facts from Income Tax Appeal No.604 of 2017. Revenue has presented following questions for our consideration:-

“(a) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that tax was deductible from payment of outsourcing

expenses such as processing charges, call centre operations and business services etc. under section 194C instead of section 194J of the Act without appreciating that the nature of services received by the assessee requires certain parameters of technical/managerial skill of highly specialized competency and falls within the purview of section 194J of the Act and not 194C of the Act?

(b) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that tax was deductible from payment of data storage charges under the head outsourcing expenses under section 194C instead of section 194J of the Act without appreciating that the nature of services received by the assessee requires certain parameters of technical/ managerial skill of highly specialized competency and falls within the purview of section 194J of the Act and not 194 C of the Act?

(c) Whether on the facts and in the circumstance of the case and in law, the ITAT was justified in holding that tax deductible from payment of event management expenses to Reliance Transport and Travel Pvt. Ltd. under section 194C instead of 194J of the Act without appreciating that the nature of services received by the assessee requires certain parameters of technical/ managerial skill of highly qualified specialized competency and falls within the purview of section 194J of the Act and 194C of the Act?

(d) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that tax was deductible from payment of net insurance commission to the agents, after excluding the service tax component from the gross commission, instead of holding that tax was deductible from the gross insurance commission including

the service tax component?”

2. Question Nos.a to c relate to the requirement of deduction of tax at source by the respondent whether the same was correctly deducted. Each question relates to a different payment and we shall therefore examine each question separately.

3. Respondent-assessee is an Insurance Company. Question Nos.a and b pertain to a deduction of tax at source on the payment of outsourcing expenses. The assessee had deducted tax under Section 194C of the Act. The revenue argues that the same ought to have been under Section 194J of the Act since payments were for managerial and technical services.

4. The CIT (Appeals) and the Tribunal examined the nature of expenditure and came to the conclusion that the assessee had hired the services for various works such as storage of data, scanning of documents, processing charges, call centre operations etc. Looking to

the nature of services outsourced, it was held that the same were basically clerical services of repetitive nature of work and payments were therefore, neither for managerial nor for technical services. Having perused the documents on record and looking to the nature of services described, we do not find that the Tribunal has committed any error. The work outsourced was in the nature of clerical work. No question of law arises.

5. In so far as question No.c is concerned, the same pertains to the charges of the event management paid by the assessee. In this context, the CIT (Appeals) and the Tribunal noted that the assessee had arranged conference at Agra. The payments were essentially for domestic ticketing, reimbursing hotel expenses, tour leaders' expenses. Such services were essentially in the nature of travel agent who had arranged the ticket booking and hotel facilities. The Tribunal therefore held that payments were not for any technical services availed by the assessee. No question of law arises.

6. Question No.d relates to the quantum on which the deduction of tax at source would be made. The respondent-assessee would hire agents for its insurance work and make payment for hiring such services. This payment would invite service tax. Under special provisions, the assessee-Insurance company would make net payment of charges to the agent and directly deposit the service tax component with the Government. The assessee deducted the tax at source on the agent's commission excluding service tax component. The revenue objects to this methodology arguing that even the service tax component ought to have been part of the amount on which TDS was required to be deducted. The Tribunal however referred to the CBDT circular essentially providing that the deduction of tax at source has to be made in relation to the income of the payee. The service tax component not being the part of the income, liability of deducting tax on this component therefore does not arise. Special reference was made to the case of the landlord and tenant where the rent paid would require deduction of tax at source, but excluding

the service tax component. In the CBDT circular it has been clarified that where the service tax component is separately indicated, the same would not find part of the payment inviting deduction of tax at source.

7. We see no error in view of the Tribunal. In the present case, the payment made to the agent was the net commission payable excluding the service tax component which in the law the assessee was required to directly deposit with the Government.

8. We notice that in other two appeals the question of event management does not arise. However, rest of the questions are common.

9. In the result, all the appeals are dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)

....