R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

INCOME TAX APPEAL NO. 1065 OF 2017

The Commissioner of Income Tax, TDS-2, Mumbai .. Appellant

Versus

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

....

- Mr. P.C. Chhotaray for the Appellant
- Mr. B.G. Yewale i/by M/s. Rajesh Shah & Co for the Respondent

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JUNE 18, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal, Mumbai ("the Tribunal" for short) dated 19.8.2016 raising following questions for our consideration:-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal 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?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal 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 Income Tax Act, 1961 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?"

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that tax was deductible from payment of data storage charges 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?"

2. Learned counsel for the parties pointed out that these issues came up for consideration in Income Tax Appeal No. 604 of 2017 and connected appeals concerning this very assessee. The Court considered the issues in following manner:-

"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."

3. In the result, the appeal is dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**