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

INCOME TAX APPEAL NO. 1418 OF 2016

Commissioner of Income Tax, (TDS)-1 .. Appellant

v/s.

B.G. Exploration & Production (India) Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th JANUARY, 2019

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 16th October, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2009-10.

2. Although numerous questions have been raised, the only issue which arises for consideration and which is pressed by the Revenue is as under :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the nature of services rendered by ONGC for which charges are paid come

within the purview of Section 194C whereas such charges are in the nature of technical fee within the meaning of Section 194J of the Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the nature of services rendered by Arya Offshore Services Pvt. Ltd. (AOSPL) for which charges are paid come within the purview of Section 194C whereas such charges are in the nature of technical fee within the meaning of Section 194J of the Income Tax Act, 1961?

3. ***Regarding question no.(i) :-***

(a) The respondent assessee has engaged the services of M/s. ONGC Ltd. underwater inspection, installation and pipeline repairs etc. These services according to the appellant were in the nature of routine repair maintenance and installation of pipelines. Thus, while making the payment to M/s. ONGC Ltd. the respondent assessee have deducted tax under Section 194C of the Act. However, the Assessing Officer was of the view that these services are technical in nature and, therefore, the tax had to be deducted at source under Section 194J of the Act. Thus, resulting in an order dated 31^{st} March, 2011 under Section 201 of the Act for short deduction of tax at source, as the same was not done under Section 194J of the Act.

(b) Being aggrieved, the respondent carried the issue to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 28th February, 2013, the CIT(A) allowed the respondent's appeal. It held that the activity carried by M/s. ONGC Ltd. was in the nature of installation work and could not be considered as fees for technical services. Besides, reliance was placed upon the CBDT Circular No.681/94, dated 3rd March, 1994 to the effect that repairs, renovation and installation of plant and machinery are in the nature of contract for work and income tax will have to be deducted from such payment under Section 194C of the Act.

(c) Being aggrieved, the Revenue filed further appeal to the Tribunal. By the impugned order dated 16th October, 2015, the Tribunal upheld the view of the CIT(A) and dismissed the Revenue's appeal.

(d) It is not disputed before us that the CBDT Circular No.681/94 dated 3rd March, 1994 is applicable to the present facts.

(e) The question as proposed by the Revenue does not give rise to any substantial question of law as the tax has been properly deducted at source under Section 194C of the Act in terms of the CBDT Circular No.681/94 dated 3rd March, 1994. Thus, not entertained.

4. Regarding question no.(ii) :-

(a) The respondent had engaged the services of Arya Offshore Services Pvt. Ltd. (AOSPL) for the purposes carrying out yard management, port coordination and shipping agency services. The respondent paid M/s. AOSPL for its services after deduction of tax under Section 194C of the Act. The Assessing Officer was of the view that deduction ought to have been made not under Section 194C but under Section 194J of the Act. This on the ground that the payment to AOSPL were in the nature of fees for technical services. Thus, leading to an order dated 31st March, 2011 under Section 201 of the Act.

(b) Being aggrieved, the respondent filed an appeal to the CIT(A). By an order dated 28th February, 2013, the CIT(A) on consideration of the nature of services concluded that the service provided by AOSPL is akin to that of C&F agent. The scope of work was not restricted to mere providing consultancy or advisory in nature but engaged in yard facility management, port coordination and logistic work. In the above view, while allowing the appeal, it held that tax has been correctly deducted at source under Section 194C of the Act. Therefore, Section 194J of the Act would no application in the present facts.

(c) Being aggrieved, the Revenue filed an appeal to the Tribunal. However, before the Tribunal the Revenue was not able to point out any illegality committed by the CIT(A). Nothing has been shown to us which would warrant taking a view different from the view taken by the CIT(A).

(d) In the above view, as this question is essentially one of finding of fact, both the CIT(A) and the Tribunal have concurrently come to the conclusion that the services rendered are not in the nature of technical services, therefore, not covered by Section 194J of the Act as contended by the Revenue. In the absence of these findings of the CIT(A) and the Tribunal being shown to be perverse, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, the appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**