IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.8.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.Nos.829, 830, 834, 835 & 837 of 2016

Commissioner of Income Tax,
Chennai ..Appellant

.vs.

M/s.Dishnet Wireless Limited,
Specer Plaza, 5th Floor,
769, Anna Salai,
Chennai 600 002
PAN: AAACD5767E ..Respondent

Prayer:- Appeals filed against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 20.07.2015 in ITA No.321, 320, 325, 326 and 328/Mds/2014, against the order of the Commissioner of Income Tax (Appeals)-VII, Chennai dated 30.12.2013 pertaining to the Assessment years 2007-2008 to 2011-2012 against the order of the Deputy Commissioner of Income Tax, TDS Circle-I, Chennai-34, dated 27.03.2013, 2803.2013, 28.03.2013, 28.03.2013 & 28.03.2013 pertaining to the assessment years 2007-2008, 2008-2009, 2009-2010, 2010-2011 & 2011-2012 respectively vide TAN/PAN CHED 02195E/AAACD5767E.

For appellant : Mr. Karthik Ranganathan,
Sr.Standing Counsel

For respondent : Mr.Vishnu Mohan

COMMON ORDER
(Made by Dr.Vineet Kothari,J)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. These Tax Case Appeals have been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'D' Bench, dated 20.07.2015 in ITA No.321, 320, 325, 326 and 328/Mds/2014, for the Assessment Years 2008-09, 2007-08, 2007-08, 2008-09 and 2010-11, by raising the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the proceeding under section 201(1) and 201(1A) cannot be sustained on the ground that the tax need not be deducted at source u/s . 194J by the assessee while paying roaming charges to the telecom operators since roaming charges paid by the assessee is not a fee for technical services as no human intervention is required for providing the connection while roaming?
>
> (ii) Alternatively, whether the Tribunal having held that the human intervention is necessary for maintenance of the telecom system that provides roaming facility, is the Tribunal right in concluding that such human intervention is not sufficient to treat the payment as fee for technical services mandating deduction of tax at source u/s 194J?"

3. When the matters are taken up for hearing, learned Senior Standing Counsel brought to our notice the instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

4. In the instant cases, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeals filed by the Revenue are dismissed, as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To.

1. The Income Tax Appellate Tribunal, Madras D Bench,
   Chennai.

2. The Commissioner of Income Tax (Appeals)-VII,
   Chennai.

3. The Deputy Commissioner of Income Tax,
   TDS Circle-I
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai-34

4. The Commissioner of Income Tax, Chennai.

T.C.A.Nos.829, 830, 834,
835 & 837 of 2016

nrl (co)
rr ii (19/11/2020)