

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

**INCOME TAX APPEAL NO.1632 OF 2017
WITH
INCOME TAX APPEAL NO.1873 OF 2017
WITH
INCOME TAX APPEAL NO.1889 OF 2017
WITH
INCOME TAX APPEAL NO.1875 OF 2017**

Commissioner of Income Tax- TDS-2
vs.

...Appellant

SBI Life Insurance Company Ltd.

...Respondent

Mr. Suresh Kumar for Appellant .

Mr. Atul K. Jasani a/w. Mr. P. C. Tripathi for Respondent.

**CORAM : K. R. SHRIRAM &
AMIT B. BORKAR, JJ.**

DATE : 22 OCTOBER 2021.

P. C. :

Respondent is engaged in the business of underwriting life insurance policies. Respondent business comprises of individual life and group business. A survey under Section 133A of the Income Tax Act, 1961 (for short, the Act) was conducted in the case of respondents on 20/11/2009. A show cause notice for default under Section 201(1) of the Act was issued on 10/3/2010. It is stated by appellant that during the course of survey, Assessing Officer noticed that while making payment of insurance commission to its agents, the

assessee deducted TDS on the net amount of insurance commission after excluding the service tax component. Assessing Officer opined that TDS was required to be deducted on the gross insurance commission including the service tax component as required under Section 194D of the Act.

2. Assessing Officer also noticed that respondent had made payments on account of usage/hiring of hardware/software etc and the expenses were treated as contractual expenses and TDS was deducted under Section 194C of the Act. Since the payments were made to various vendors like payment to server management services and call support services etc., which were highly specialized work requiring involvement of highly qualified and technical manpower for carrying out these activities, Assessing Officer has felt that these activities for which payments were made by respondents are of technical nature and therefore liable to TDS under Section 194J of the Act.

3. Assessing Officer also noticed that respondents had incurred foreign travel expenses for its agents who were working for soliciting or procuring insurance business for respondent and Assessing Officer opined that foreign travel expenses incurred by respondents on its agents should be covered under the words "income by way of remuneration or reward whether by way of commission or otherwise" used in Section 194D. Since respondent did not deduct TDS Assessing Officer treated respondent as an assessee in default

within the provisions of Section 201(1) of the Act and worked out TDS default.

4. Against the order dated 15/3/2011 passed by the Assessing Officer under Section 201(1) of the Act, rectification order dated 28/11/2011 under Section 154 of the Act read with order dated 20/12/2011 under Section 201 (1A) of the Act, respondent preferred an appeal before the Commissioner of Income Tax (Appeal) (CIT(A) for short). CIT (A) partly allowed the appeal by order dated 28/8/2012. CIT (A) held that the service tax on insurance commission to the life insurance agent is the liability to the respondent and it cannot be considered as income in the hands of agents and hence no tax was required to be deducted at source under Section 194D of the Act on the service tax component. CIT (A) directed that the demand of tax to that extent be deleted.

5. With regard to payments on account of hiring of hardware/software, CIT(A) held that the same was not in the nature of professional and technical services as construed under the provisions of Section 194J of the Act and hence, provisions of Section 194J of the Act are not applicable and that the respondent had correctly deducted TDS under Section 194C of the Act. CIT(A) deleted the demand raised by the Assessing Officer in this regard.

6. As far as foreign travel expenses were concerned, CIT (A) held that deduction was required to be made under Section 194D of

the Act and upheld the order of Assessing Officer to that extent. CIT (A) went on to hold that to the extent amount were spent in respect of foreign travel of respondent's own employees it was required to be excluded while computing the default of tax under the provisions of Section 201(1) of the Act.

7. CIT (A) also passed a separate order dated 28/9/2012 in the appeal filed by respondent in respect of order passed by Assessing Officer under Section 201(1A) of the Act.

8. Being aggrieved by order dated 28/8/2012 in respect of the order passed under Section 201(1) of the Act dated 15/3/2011 of the AO, the appellant as well as respondent filed appeals before Income Tax Appellate Tribunal (for short, ITAT).

9. ITAT by order dated 18/11/2016 dismissed the appeal filed by the Revenue and upheld the order of CIT(A) in respect of service tax component of insurance commission paid to or credited in the name of insurance agent and also that respondent has correctly deducted TDS under Section 194C of the Act on account of usage/hiring of hardware/software. ITAT also held that foreign travel organized by respondent for training purpose and to discuss market strategies and to understand the business at the ground level by no stretch of imagination can be held to be liable for deduction under Section 194D. Aggrieved by this order of ITAT the appellant has preferred this appeal where following substantial questions of law are

raised:

- a) Whether there is error of law apparent on the face of record ?
- b) Whether the Hon'ble Tribunal failed to appreciate that the provision of the section 194D of the I. T. Act r/w. Section 68 (payment of service tax) of Service Tax Act, from which it is clear that the service tax component is an integral part of value of expenses in respect of a taxable service. During the year under consideration, assessee has paid service tax on commission to agents, but assessee has excluded the amount of service tax from gross insurance commission and deducted TDS on net insurance commission. However, as per the provisions of Section 194D of the I. T. Act assessee is required to deduct TDS on the gross amount of insurance commission ?
- c) Whether the Hon'ble ITAT erred in not appreciation the interpretation of Circular No.4/2008 dated 29/4/2008 of CBDT r/w clarification vide Circular No.275/73/2007 IT(B) dated 30/6/2008 wherein it is emphasized that the Circular No.4/2008 clearly speaks of Section 194I only and its scope is restricted to 194I only and is not extended to other sections viz., 194J , 194D etc. ?
- d) Whether the Hon'ble ITAT has ignored the fact that

the payments were made to various vendors, like payment to server management services and call support services etc. which were highly specialized work requiring the involvement of highly qualified and technical manpower for carrying out these activities and therefore, the payment towards these services are in the nature of payments for technical services and therefore liable for TDS under Section 194J ?

e) Whether the Hon'ble ITAT erred in upholding the order of the Id. CIT(A) deleting the tax by way of short deduction without properly appreciating the factual and legal matrix of the case as clearly brought out by the Assessing Officer in the order under Section 201(1) of the Act ?

10. As regards questions b, c, d and e , counsel submitted that ITAT in the impugned order had relied upon the decision of the co-ordinate Bench in case of M/s. Reliance Life Insurance Co. Ltd. in ITA No.3009 to 3011/M/2013. Appellant had impugned that decision of ITAT in M/s. Reliance Life Insurance Co. Limited in three appeals bearing Income Tax Appeal Nos.604/2017, 596/2017 and 612/2017 before this court. This court by its order dated 10/6/2019 dismissed all the three appeal filed by Revenue. Therefore counsel submitted that questions b, c, d and e will no more be substantial questions of law.

11. As regards question (a), we concur with the view expressed by the ITAT. Section 194D reads as under:

"194D. Any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force."

12. Therefore the obligation to deduct is on the person who is paying and the deduction to be made at the time of making such payment. Factually and admittedly no amount has been paid to the agents by respondent as a reimbursement of expenses incurred by agent in the foreign travel. Respondent had made arrangement for foreign travel for all the agents and paid expenses directly to those service providers. Therefore as no amount was paid to the agents by respondent, obligation to deduct income tax thereon at source also would not arise.

13. In the circumstances, we disagree with the view expressed by the Assessing Officer and concur with the view expressed by the CIT(A) as well as ITAT (though its reasons are different from our reasons).

14. Appeals are devoid of merits and are dismissed with no order as to costs.

15. Identical substantial questions of law have been proposed for above 4 appeals except Income Tax Appeal No.1632/2017 where one question is less regarding foreign travel expenses of agent. We dispose all the appeals by this common order.

(AMIT B. BORKAR, J)

(K. R. SHRIRAM, J.)

RAJESHWARI
SUBODH
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