

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 2709/Kol/2013
Assessment Year: 2006-07

Snowtemp Commercial Pvt. Ltd. Vs. Income-tax Officer, Wd-12(2), Kolkata
(PAN: AADCS7999G)
(Appellant) (Respondent)

Date of hearing: 30.01.2017
Date of pronouncement: 03.02.2017

For the Appellant: Shri G. R. Saha, Advocate
For the Respondent: Shri Sallong Yaden, Addl. CIT

ORDER

Per Shri M. Balaganesh, AM :

This appeal by assessee is arising out of order of CIT(A)-XII, Kolkata vide Appeal No. 512/XII/12(2)/08-09 dated 09.10.2013. Assessment was framed by ITO, Wd-12(2), Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2006-07 vide his order dated 26.12.2008.

2. The only issue to be decided in this appeal is as to whether the Id CIT(A) is justified in upholding the disallowance made u/s 40(a)(ia) of the Act in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a closely held company engaged in the business of soft coke and other by-products of coal and also steel products. The assessee company had two divisions viz C.F.R.I. division and S.S.F. division. Whereas business activity of S.S.F. division during the relevant period was limited to manufacturing and selling of coke only, C.F.R.I. division had some trading activities of coal and some supervision activities apart from manufacturing and trading of manufactured coke. The assessee claimed expenses on account of Supervision charges of Rs. 2,00,000/- and Rs.1,72,000/- for C.F.R.I division and S.S.F. division respectively. The assessee filed the details of the said expenditure and explained that the Supervision charges are required for arranging and getting the coal loaded on to the trucks at colliery end in order to avoid pilferage in the quantity of coal. The Id AO concluded that the said payments were made

pursuant to contracts entered into by the assessee with those parties carrying on supervision work which attracts deduction of tax at source in terms of section 194C of the Act and failure of which, he invoked disallowance u/s 40(a)(ia) of the Act and disallowed the sum of Rs. 3,72,000/- in the assessment.

4. The Id CIT(A) held that the amount has been incurred on account of supervision charges paid to some parties and there was no contractual agreement whatsoever for the same with such parties and therefore the assessee need not deduct tax on this amount. He observed that the work carried out in the nature of supervision charges does not fall under the ambit of the term 'contract' as covered in section 194C of the Act. He observed that the provisions of section 194C of the Act were wrongly invoked by the Id AO. However, the Id CIT(A) observed that the work of supervision can only be done by the expert / professional persons and hence it falls under the ambit of section 194J of the Act warranting deduction of tax at source and he concluded that the payments were made for professional services rendered by those parties. Accordingly he upheld the disallowance made u/s 40(a)(ia) of the Act. Aggrieved, the assessee is in appeal before us on the following grounds:-

"1. For that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in law in confirming the disallowance of Rs.3,72,000/- made by the Assessing Officer purportedly u/s. 40(a)(ia) of the Act for alleged failure to deduct Tax u/s. 194C.

2. For that on the facts and in the circumstances of the case, the CIT(A) erred in law in confirming the above said disallowance for alleged failure to deduct tax u/s. 194J of the Act instead of S. 194C of the Act as done by the AO.

3. For that the disallowance is unsustainable in either case of alleged failure u/s. 194C or S. 194J of the Act as no liability was thereon the appellant to deduct tax on the subject amount of expenditure."

5. The Id AR argued that it is not in dispute that the work carried out were in the nature of supervisory job. He argued that for carrying out this job, no special expertise warranting the presence of professional skills are required. It is more of a job rendered by a watchman for safe loading of coal to the trucks from the colliery in order to avoid pilferage. For doing this job what is required is only persons of highest integrity and smartness and such persons need to be only vigilant and have a strong eye to avoid pilferage in the quantity of coal. Hence, the persons rendering those services need not possess any special professional skills and hence their services cannot be categorized as professional services within the meaning of section 194J of the Act. The term 'professional services' is defined in section 194J of the

Act and payments made herein do not fall under that category. He also filed the entire details of supervision charges which are enclosed in page 1 of the paper book as below:-

Sl. No.	Name of Parties	Address	PAN No.	Amount (Rs.)
1.	Tushan Integrated Finance Private Limited	101, 1 st floor, 18, Prince Anwar Shah Road, Kolkata-700033	AAACT9911G	97,650.00
2.	Ravi Coal Udyog Private Limited	101, 1 st floor, 18, Prince Anwar Shah Road, Kolkata-700033	AABCR2830B	98,250.00
3.	Awadesh Kumar	3 'O' Shree Gopal Complex, Ranchi-834001		36,497.00
4.	Ravi Srivastav	403, Lee Desire Complex, Opp. Hariom tower, Circular Road, Ranchi		29,216.00
5.	Shasiram	Transport Nagar, Main Road, Kujju, Dist. Ramgarh		3,460.00
6.	Anil Yadav	C/o Ravi Kumar, At-Charhi, Post-Charhi, Dist. Hajaribagh, Pin-825336		3,300.00
7.	Rajesh Kumar	C/o Arun Mahto, At-Indra, Post Jarwa, Dist Hajaribagh, Pin-825336		47,595.00
8.	Ram Parvesh	House No. 6, New Area, Gandhi Nagar, Hinoo, Ranchi-834002		27,127.00
9.	Pappu Jaiswal	C/o Ravi Pal, Major Koti, Itki Road, Ranchi, Pin-834005		28,905.00
				372,000.00

He stated that at least the two parties to whom payments were made had mentioned their Permanent Account Numbers and had duly included the subject mentioned payments in their returns of income and paid taxes. He argued that infact the details of ITR acknowledgement of these two payees were also filed before the revenue which were ignored by them. He placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs Ansal Landmark Township P Ltd reported in 377 ITR 635 (Del) wherein it was held that the amendment in second proviso to section 40(a)(ia) of the Act had been held to be retrospective in operation. With regard to other payments made to various individuals, as argued earlier, the services rendered by them do not fall under the category of professional services as stated by the Id CIT(A). They are merely supervision charges paid to casual labourers of the assessee and also does not fall under the contract as covered in section 194C of the Act. Moreover, the revenue is not in appeal against the different

finding given by the Id CIT(A) that the subject mentioned payments fall under the ambit of section 194J as against section 194C of the Act mentioned by the Id AO. Hence he argued that what is to be adjudicated is only from the context of section 194J of the Act. In response to this, the Id DR argued that let the entire matter be relooked by the Id AO to verify the applicability of correct provisions of Chapter XVIIB of the Act in order to avoid confusion and accordingly prayed for setting aside of this issue to the file of the Id AO for fresh verification.

6. We have heard the rival submissions and perused the materials available on record including the details filed in the paper book of the assessee comprising of pages 1 to 108. It is not in dispute that the payments were made only for supervision charges. We agree with the arguments of the Id AR that the said payments were made only to supervise the movement of coal from colliery in order to avoid pilferage while loading the same into the trucks. It is quite usual that certain persons would have to be employed for carrying out this supervision job which is more of a watchman job as rightly pointed out by the Id AR. This admittedly does not warrant any possession of any professional skill so as to fall within the ambit of section 194J of the Act. As rightly pointed out by the Id AR that though the addition has been made for violation of section 194C of the Act, the Id CIT(A) had shifted the same to section 194J of the Act, against which, the revenue is not in appeal before us. Hence we refrain to give our opinion on the applicability of section 194C of the Act in the present case. We hold that the payments were made towards simple supervision charges, which do not fall under the category of professional services as defined in section 194J of the Act and hence we hold that there is no obligation to deduct tax at source. Accordingly, no disallowance u/s 40(a)(ia) of the Act would operate. Hence the grounds raised by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 03.02.2017

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated : 3rd February, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Snowtemp Commercial Pvt. Ltd., 18, Prince Anwar Shah Road, 1st floor, Flat No. 101, Kolkata-700 033.
- 2 Respondent –ITO, Wd-12(2), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.