

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri B. Ramakotaiah, Accountant Member**

**ITA No.433/Hyd/2015**  
(Assessment Year: 2012-13)

Sri Gowtham Academy of General & Technical Education, Secunderabad PAN: AADTS 7203 A	Vs	Dy. Commissioner of Income Tax, Circle 15(1) Hyderabad
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For Assessee :	Shri C.S.Subrahmanyam & Shri V.Siva Kumar
For Revenue :	Shri K.J. Rao, DR

Date of Hearing:	08.12.2016
Date of Pronouncement:	03.02.2017

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2012-13. In this appeal, the assessee is aggrieved by the order of the CIT (A) in holding that the agreement between the assessee and M/s. K12 Techno Services Pvt. Ltd is a composite agreement and therefore assessee is required to deduct tax at source u/s 194J of the Act from all the payments made towards various services rendered by M/s K12 Techno Services Pvt. Ltd.

2. Brief facts of the case are that the assessee is a society engaged in the business of running educational institutions in the name and style of M/s Sri Gowtham Academy of General &

Technical Education. To verify the compliance of the TDS provisions of the I.T. Act by the assessee, a survey operation u/s 133A was conducted on 19.10.2011. On verification of the details furnished by the assessee, it was noticed that the assessee has made TDS u/s 194C of the Act on some payments and u/s 194J of the Act on some other payments made to M/s K12 Techno Services Pvt. Ltd. The assessee was therefore directed to furnish the copy of the agreement and details of the services rendered by M/s. K12 Techno Services Pvt. Ltd. The assessee furnished the same.

3. On perusal of the details, the A.O observed that the assessee entered into an agreement with M/s K12 Techno Services Pvt. Ltd, West Marredapally, Secunderabad, for availing various services from it for running of the educational institutions. On close examination of the services rendered by M/s K12 Techno Services Pvt. Ltd to the assessee, the AO observed that they include both 'works contracts' as well as 'professional and technical services' and the assessee has affected the TDS by treating its services partly as professional u/s 194J and partly as works contracts u/s 194C of the Act. The AO observed that the entire services are rendered by one single entity i.e M/s K12 Techno Services Pvt. Ltd, and therefore, by virtue of single contract involving various services, according to him, the assessee ought to have deducted TDS for all the services at 10% as required u/s 194J of the Act. For coming to this conclusion, the AO relied upon the following decisions:

- i) EMC vs. Income Tax Officer (TDS) Ward-2(3) Mumbai (2010) 37 SOT 31 (Mum.)
- ii) CBDT vs. Oberoi Hotels P Ltd (1998) 231 ITR 148
- iii) CBDT Circular No.720 dated 30.8.95
- iv) M/s. Associated Cements Ltd vs. CIT (1993) 201 ITR 435
- v) CBDT Circular No.715 dated 8.8.1995

4. Thereafter, he worked out the difference between the TDS deducted and the TDS that ought to have been deducted u/s 194J and treated the assessee as the assessee in default u/s 201(1) and also computed the interest thereon u/s 201(1A) and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

5. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below, has drawn our attention to various clauses of the composite agreement between the assessee and M/s K12 Techno Services Pvt. Ltd and also details of the services rendered along with the relevant bills and vouchers relating to the said services. The learned Counsel for the assessee submitted that the decisions relied upon by the AO are distinguishable from the facts of the case before us and therefore, according to him, both the authorities below have erred in holding that TDS for all the services ought to have been made @ 10% as prescribed u/s 194J of the Act.

6. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the agreement was a composite agreement and therefore, the TDS provisions u/s

194J ought to have been applied on the aggregate of the amount paid by the assessee.

7. Having regard to the rival contentions and the material on record, we find that M/s K12 Techno Services Pvt. Ltd, has rendered various services to the assessee for the efficient and effective running of the educational institution. The copy of the master services agreement is placed at page No. 1 to 42 of the paper book and the copy of the supplement agreement dated 01-04-2011 is placed at pages 43 to 45 of the paper book. On perusal of the same and also the Annexure-6 of the agreement which lists out the payment terms, we find that the service charges are being billed on 'per teacher' or 'per student' basis and periodicity of the time of billing is also varying from service to service. And thus, it is seen that it is not a lump sum payment by the assessee to M/s. K12 Techno Services Pvt. Ltd. for all the services being rendered under the agreement but it is a payment on the basis of each of the services and per person. The TDS is to be made on the payment made and the TDS rates are fixed on the basis of nature of the services or contract and not on the basis of the number of recipients of the payment. When the intention of both the parties is clear that the payments shall be made for each of the service independently, then, the services are clearly ascertainable and divisible. The TDS rates for each of the services would therefore vary. The TDS made by the assessee for various services has been tabulated by the Assessing Officer and the CIT(A)'s in their orders. For the sake of convenience and ready reference, the details are reproduced hereunder:-

Expenditure	TDS Section	Gross	Rate of TDS	TDS Amount
Programs % Functions	194C	19,86,180.00	2%	39,723.00
Electronic Media, other publicity & Marketing services	194C	3,42,01,453.00	2%	6,84,029.00
Print Media	194C	83,58,616,.00	2%	1,67,172.32
General Maintenance services	194C	2,45,13,898.00	2%	4,90,277.96
Provision of Education services - AV lab, computer lab, Multimedia	194C	4,09,46,320.00	2%	8,18,926.40
Expenditure	TDS Section	Gross	Rate of TDS	TDS Amount
Teacher training service	194J	11,48,749.00	10%	1,14,874.90
Staff hiring services	194J	36,96,665.00	10%	3,69,666.50
Performance review & benefit analysis	194J	28,27,377.00	10%	2,82,737.70
Audit & Quality management service	194J	22,71,137.00	10%	2,27,113.70
Provision of space	194I	10,19,00,343.00	10%	1,01,90,034.30
Examination & assessments	194J	1,22,49,404.00	10%	12,24,940.00
Accounts & Records	194J	37,43,521.00	10%	3,74,352.10
Content Dev. & curriculum Improvement services	194J	1,22,58,852.00	10%	12,25,885.20
Brand Royalty fee	194J	51,88,500.00	10%	5,18,850.00

8. From the perusal of the above, it is clear that the services rendered by M/s K12 Techno Services Pvt. Ltd. are distinguishable from each other and though the recipient of all the payments is a single party, the nature of the services are discernible and different. If the contention of the Revenue was to be accepted, then why should the TDS be deducted u/s 194J and not u/s 194C for all the payments treating the entire agreement as a work contract?. When the basket of services is filled with different and distinguishable services, we are of the opinion that

the assessee was correct in adopting different rates of TDS for different types of payments.

9. The decisions relied upon by the Ld. AO and the CIT(A) are distinguishable from the facts of the case before us. In the case of EMC Vs Income Tax Officer (Cited Supra), the issue was whether the assessee therein was a contractor u/s 194C(1) or a subcontractor u/s 194C(2) of the Act. And therefore it is not relevant to the present case.

10. In the case of Oberoi hotels India Pvt Ltd, the Hon'ble Supreme Court was dealing with the case of an assessee who was running hotels and the issue therein was the nature of services rendered for managing a modern hotel, including promotion of business, recruiting and training staff etc., whereas in the case before us, the assessee is running an educational institution and the types of services are totally distinguishable from the services in the case of a hotel. Therefore, this case is distinguishable on facts. In the case of Associated Cements, the Hon'ble Supreme Court was considering whether the tax deductor can decide or estimate the income component of the receipt and deduct tax thereon only and restrict the TDS to such income alone but such is not the case before us. Even the CBDT circular relied upon by the Ld. DR provided that the all the payments cannot be covered under one section. Therefore, in our opinion, the Assessing Officer and CIT(A) have erred heard in holding that the assessee ought to have made TDS u/s 19J of the Act on the entire payment to M/s K12 Techno Services Private Limited.

11. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 3<sup>rd</sup> February, 2017.

**Sd/-**  
**(B. Ramakotaiah)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 3<sup>rd</sup> February, 2017.

***Vinodan/sps***

Copy to:

- 1 Sri Gowtham Academy of General & Technical Education, 10-2-240/250, GVR's Laxmi Nivas, Street No.6, West Maredpally, Secunderabad 500026
- 2 Dy.CIT, Circle 15(1) I.T.Towers, AC Guards, Hyderabad
- 3 CIT (A)-8 Hyderabad
- 4 CIT – (TDS) Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*