आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2355/Mum/2016

(**निर्धारण वर्ष /** Assessment Year : 2012-13)

Dy. Commissioner of Income Tax (TDS) 1(3), Room No. 604, 6th floor, Smt. K.G. Mittal Ayurvedic Hospital Bldg., Charni Road (W), Mumbai – 400 002.	**बनाम**/ v.	M/s Jet Lite (India) Ltd., Siroya Centre, Sahar Airport Road, Andheri (E), Mumbai – 400 099.
	स्थायी लेखा सं./ PAN AADCS4480L	
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by :	Shri P.R. Ghosh, CIT DR
Assessee by :	Shri Nirav Poddar

सुनवाई की तारीख **/Date of Hearing : 11-07-2017**

घोषणा की तारीख **/Date of Pronouncement : 25.09.2017**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue being ITA No. 2355/Mum/2016, is directed against the appellate order dated 22.02.2016 passed by learned Commissioner of Income Tax (Appeals)- 59, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2012-13, the appellate proceedings before the learned CIT(A) has arisen from the order dated 24.03.2014 passed by the learned Assessing Officer(hereinafter called "the AO") u/s 201(1)/201(1A) of the Income-tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> "(i) The Ld. CIT(A) has erred on facts and circumstances of the case and in law in by not treating Passenger Services Fees (PSF) as ' Rent' as defined under section 194I of the I.T. Act, 1961, as the same is paid for the use of Airport Premises, various equipment installed and various other facilities provided to the passengers.
>
> (ii) The Ld. CIT(A) has erred on facts and circumstances of the case and in law by deleting short deduction of Rs.22,28,75,133/-, without appreciating the fact that the 'Passenger Service Fee' is nothing but Rent charged from the passengers to use the Airport Premises, various equipment installed and various other facilities provided to the passengers and paid to the Airport Operator.
>
> (iii) The Ld. CIT(A) has erred on facts and circumstances of the case and in law by deleting short deduction of Rs. 4,57,451/- without appreciating the fact that 'cargo handling charges' are 'Fees for Professional or Technical Services' in nature and covered u/s. 194J of the I.T. Act, 1961 and not of the nature of 'Contract' covered under section 194C of the I.T. Act, 1961.
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> (iv) The Ld. CIT(A) has erred on the facts and circumstances of the case and in law by not appreciating the fact that Cargo handling requires technically competent and skilled persons to handle highly complicated and mechanized machinery.
>
> (v) The Ld. CIT(A) has erred on the facts and circumstances of the case and in law by deleting interest levied under section 201(1A) of the I.T. Act, 1961, amounting to Rs. 6,74,64,354/- by holding that 'Passenger Service Fee' is not subject to deduction of tax at source under the I.T. Act, 1961.
>
> (vi) The Ld. CIT(A) has erred on facts and circumstances of the case and in law by deleting the interest amounting to Rs. 1,64,682/- levied u/s. 201(1A) of the I.T. Act, 1961 by holding that cargo handling charges do not fall within the purview of section 194J but fall within the purview of section 194C of the I.T. Act, 1961."

3. The brief facts of the case are that a survey u/s 133A of the Act was conducted by Revenue on 21st January, 2011 against the assessee. Based upon the survey, order u/s. 201(1)/201(1) of the Act was passed against the assessee for assessment years 2008-09, 2009-10, 2010-11 & 2011-12 for failure to deduct tax at source on passenger service fee (in short 'PSF') and for short deduction of tax at source for payments made towards cargo handling charges(in short 'CHC') u/s 194C instead of Section 194J . The assessee also did not deducted tax at source for the year under consideration for expenses incurred towards PSF while tax was deducted at source u/s 194C on cargo handling charges as against under section 194J of the Act. The A.O. issued notice u/s 201(1)/201(1A of the Act to the assessee. The assessee was asked to produce month-wise details of PSF and CHC charges, the tax deducted at source thereon and actual payment details which were filed by the assessee.

It was observed by the A.O. that the assessee had made payments to airport operators towards PSF and the assessee had not deducted tax at source on these amount u/s 194I . The A.O. observed that the PSF is levied by the airport operators which was collected by the airlines from the passengers and these charges were charged for the usage of airports and related equipments, infrastructure and other amenities provided by the AAI to the passengers at the airport premises. Hence, as per AO it takes the nature of rent as defined in the Explanation to Sec.194-1 of the Act. The details of payments of PSF paid to Airport Authorities and TDS deductible thereon u/s. 194-1 of the Act as outlined by the AO is as under:

Sr No.	Name of AAI	Amount of PSF paid(In Rs.)	Amount of TDS deductible u/s 194-I @ 20% (In Rs.)
01	Airport Authority of India	48,34,32,117	9,66,86,423
02	Bangalore International Airport	7,94,62,546	1,58,92,509

	Pvt. Ltd.		
03	Cochin International Airport Ltd.	1,22,60,817	24,52,163
04	Delhi International Airport Pvt. Ltd.	24,40,72,979	4,88,14,596
05	GMR Hyderabad International Airport Pvt. Ltd.	4,84,80,313	96,96,063
06	Mihan India Ltd	3,42,85,143	68,57,029
07	Mumbai International Airport Pvt. Ltd.	21,23,81,750	4,24,76,350
Total		111,43,75,665	22,28,75,133

The PSF payment made by the assessee for financial year 2011-12 was Rs. 111,43,75,665/- , wherein tax was deductible at source u/s 194-I of the Act in the opinion of the AO on the above payment which worked out to Rs. 22,28,75,133/- which was not deducted at source by the assessee for which the assessee was held to be in default u/s 201(1) by the AO .

Similarly, it was observed by the A.O. that the assessee had incurred expenses towards CHC wherein the tax was deducted at source u/s 194C of the Act whereas it was held that tax was required to be deducted at source u/s194J of the Act. The A.O. also observed that these payments were made for the services rendered which were in the nature of technical services and total payment on account of CHC for the financial year 2011-12 were Rs. 57,58,143/-. Notice dated 4th March, 2014 was issued by the AO to the assessee asking as to why the assessee should not be held as assessee in default u/s 201(1) of the Act. The assessee in reply had filed the details of amount paid and no other submissions were made. The A.O. observed that these charges include x-ray charges, loading & unloading charges etc. . It was held that these are specialized technical work performed by technically competent person with expertise in the field by use of highly mechanized machines and skilled and technically competent manpower and therefore payment for this expenditure towards cargo handling charges are liable for

deduction of tax at source u/s.194J of the Act. The default u/s 201(1) was accordingly computed as under:-

Amount of payment	TDS deductible u/s 194J @ 10%	TDS deducted u/s 194C @ 2%	Default u/s 201(1)
Rs. 57,18,143	Rs. 5,71,814	Rs. 1,14,363	Rs. 4,57,451

Thus the A.O. computed the default amount u/s 201(1) of the Act for assessment year 2012-13, vide orders dated 24-03-2014 as under:-

Computation of default u/s 201(1).

(a) On account of non-deduction of TDS on Passenger service fee	Rs. 22,28,75,133/-
(b) On account of short deduction of tax on Cargo handling charges	Rs. 4,57,451/-
Total default u/s 201(1) of the Act	Rs. 22,33,32,584/-

The interest u/s 201(1A) on non-deduction of tax at source on PSF was computed by the AO at Rs. 6,74,64,354 , while interest u/s 201(1A) on short-deduction of tax at source on CHC was worked out by the AO at Rs.1,64,682/- , vide orders dated 24-03-2014 passed u/s 201(1A) .

4. Aggrieved by the orders dated 24-03-2014 passed by the A.O. u/s 201(1) and 201(1A), the assessee carried the matter in appeal before the ld. CIT(A). The ld. CIT(A) while considering the decision of the Tribunal in assessee's own case for assessment year 2010-11 in ITA No. 5114/Mum/2012 dated 9th July, 2014 held that no tax is deductible at source of PSF paid by the assessee and relief was granted by learned CIT(A) in his appellate orders dated 22-02-2016 by deleting the demand raised by the AO. Similarly with

respect to CHC, it was held by learned CIT(A) that the payments for CHC are covered for deduction of tax at source u/s 194C and not u/s 194J by following decision of the tribunal dated 09-07-2014 in assessee's own case for assessment years 2009-10,2010-11 and 2011-12 in ITA no. 4635-36/Mum/2012, 5114/Mum/2012 and 5115/Mum/2012 , vide learned CIT(A) appellate orders dated 22-02-2016 wherein demand raised by the AO for short deduction of tax at source was deleted by learned CIT(A).

5. Aggrieved by the appellate order dated 22-02-2016 passed by ld. CIT(A), the Revenue has filed an appeal before the tribunal.

6. The ld. D.R., at the outset, fairly conceded that both these issues are covered in favour of the assessee by the above cited decisions of the tribunal for assessment year 2009-10,2010-11 and 2011-12 in ITA no. 4635-36/Mum/2012, 5114/Mum/2012 and 5115/Mum/2012 in assessee's own case vide common orders dated 09-07-2014 passed by the tribunal.

7. The ld. counsel for the assessee submitted that the tribunal in assessee's own case for assessment year 2009-10,2010-11 and 2011-12 in ITA no. 4635-36/Mum/2012, 5114/Mum/2012 and 5115/Mum/2012 vide common orders dated 09-07-2014 had concluded both the issue's in favour of the assessee. The ld. counsel for the assessee also submitted that the Mumbai-tribunal in the case of ACIT v. Jet Airways (India) Ltd. [2013] 158 TTJ 289 had held that PSF is not liable to tax deduction at source u/s 194I of the Act. Our attention was also drawn to recent circular no 21/2017 dated 12-06-2017 wherein CBDT has accepted the position that no tax is deductible at source u/s 194I on PSF. For ground No. iii & iv, the ld. counsel submitted that the issue has been concluded in favour of the assessee by the decision of the Tribunal for assessment year 2009-10,2010-11 and 2011-12 in ITA no. 4635-36/Mum/2012, 5114/Mum/2012 and 5115/Mum/2012 in assessee's

own case vide common orders dated 09-07-2014 wherein tribunal has held that the CHC is subject to tax deductible at source u/s 194C and not u/s 194J. The assessee had duly deducted the tax at source u/s 194C on payments made towards CHC. With respect to ground No. v & vi, it is submitted that interest is consequential in nature and depends on the decision of the tribunal w.r.t. both the issues of payments made towards PSF and CHC and applicability of provisions of deduction of tax at source.

8. We have considered rival contentions and also perused the material available on record including judicial decisions relied upon. The assessee is an airline company.

We have observed that there are two issues with respect to which this appeal is filed by Revenue concerning non-deduction of tax at source or short deduction of tax at source by the assessee while making payments for these expenses. First is with regard to PSF wherein the assessee had paid the following amounts during the year but no tax was deducted at source and the AO worked out default u/s 201(1) for non deduction of tax at source on PSF Charges u/s 194I, as under:-

Sr No.	Name of AAI	Amount of PSF paid (In Rs.)	Amount of TDS deductible u/s 194-I @ 20% (In. Rs.)
01	Airport Authority of India	48,34,32,117	9,66,86,423
02	Bangalore International Airport Pvt. Ltd.	7,94,62,546	1,58,92,509
03	Cochin International Airport Ltd.	1,22,60,817	24,52,163
04	Delhi International Airport Pvt. Ltd.	24,40,72,979	4,88,14,596
05	GMR Hyderabad International Airport Pvt. Ltd.	4,84,80,313	96,96,063
06	Mihan India Ltd	3,42,85,143	68,57,029
07	Mumbai International Airport Pvt. Ltd.	21,23,81,750	4,24,76,350
Total		111,43,75,665	22,28,75,133

The A.O. held that the afore-stated payments were liable for deduction of tax at source u/s 194I of the 1961 Act while learned CIT(A) granted relief to the assessee relying on decision of tribunal for assessment year 2009-10,2010-11 and 2011-12 in ITA no. 4635-36/Mum/2012, 5114/Mum/2012 and 5115/Mum/2012 in assessee's own case vide common orders dated 09-07-2014 wherein tribunal held that PSF charges are not subject to deduction of tax at source u/s 194I of the 1961 Act. The tribunal relied upon decision of Jet Airways (India) Limited (supra) of the tribunal . The appeal filed by the Revenue against said decision of the tribunal in the case of Jet Airways (India) Limited(supra) stood dismissed by Hon'ble Bombay High Court in ITA no. 1181 of 2014 dated 04-01-2017 on the grounds that no substantial question of law arises. The Hon'ble Bombay High Court relied upon judgment of the Hon'ble Supreme Court dated 04-08-2015 in the case of Japan Airlines and Singapore Airlines in CA no. 9875/2013 and 9876-9881 of 2013 while dismissing the appeal of Revenue in Jet Airways(India) Limited. The CBDT has also recently come out with circular no. 21/2017 dated 12-06-2017 wherein CBDT accepted the position that section 194I is not applicable on PSF charges. We have observed that the Tribunal in assessee's own case for assessment year 2010-11 in ITA no. 5114/Mum/2012 vide common orders dated 09-07-2014 has concluded the issue of deductibility of tax at source on PSF by holding as under:-

> "16. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited order of the Tribunal in the case of Jet Airways (India) Ltd (supra), dated 23.10.2013. On perusal of the said order of the Tribunal, we find the paras 12 to 14 are relevant in this regard and the same are reproduced here under: I
>
> > "12. We have carefully considered the rival submissions and perused the orders of the authorities below and the relevant material evidence brought on record. Let us first see the cause of

PSF, cause lies in Rule 88 of the Indian Aircraft Rules, 1937, which provides as under:-

> "the licensee is entitled to collect fees to be called as Passengers Services Fees(PSF) from the embarking passengers at such rate as the Central Government agency designated by the Central Government for providing the security services"

A perusal of the aforementioned rule clearly shows that it is a statutory liability for every licensee to collect PSF. Since It is a statutory liability and the meaning given by the statute has to be considered and in this case the Indian Aircraft Rules, 1937 has used the term 'Fees". therefore, same meaning has to be given while considering the PSF. It is not in dispute that the assessee is only acting as a conduit between the embarking passengers and the Central Government agency. This view is also fortified by the fact that out of Rs.200/-, Rs.130/- is the security component which is deposited in a separate escrow account which is operated and can be utilized by airport concerned only to meet the security related expenses of that airport.

13. Further it is pertinent to note that the CBDT in its Office Memorandum dated 30-06-2008 has clearly stated the fact that the licensee of the airport i.e. the airport operator, is required to collect the PSF is initially collected by the concerning airlines from the passengers and then handed over to the respective airport operator/authority. Thus, it is absolutely clear that the assessee only collects the PSF from the passengers for and on behalf of the airport authority/operator and passes the same to the airport authority/operator. This view would also be made very clear by the answer to question No.24 given by the CBDT it is Circular No.715, dated 8th August 1995, which relates to clarification of various provisions relating to tax deduction at source. Question No.24 reads as under ;-

> "Question 24 : Whether in a case of composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover; section 194-1 of the Act would be attracted?
>
> Answer : If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-1 from payments thereof."

The facts under consideration show that the PSF is a statutory liability without demarcating/earmarking the area taken on rent,

> nor it is a case of systematic use of land specified for consideration under an arrangement which carries the characteristics of lease or tenancy. A mere use of the land and payment charged, which is not for the use of the land but for maintenance of the various services including technical services would not technically bring the transaction and the charges within the meaning of either lease or sub-lease or tenancy or any other agreement or arrangement or any nature of lease or tenancy and rent. For these observations, we draw support from the decision of the Hon'ble Madras High Court in the case of CIT v. Singapore Airlines Ltd. [2012] 209 Taxman 581/24 taxmann.com 200.
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> 14. It would not be out of place to consider the CBDT Circular No.1/2008, dated 10th January, 2008 relating to the clarification regarding the applicability of provisions of Section 194- I of the Act to payments made by the customers on account of cooling charges to the cold storage owners, wherein the CBDT had the occasion to consider the representations in respect of the issue, whether the customer hires the building, plant and machineries etc., without packages for reservation for a required period are kept in cold storage after paying cooling charges. The CBDT, thus clarified that the customer is also not given any right to use any demarcated space/place or the machinery of the cold storage and thus does not become a tenant. Therefore, the provisions of 194-I is not applicable to the cooling charges paid by the customers of the cold storage. Applying the same analogy, the PSF charges paid by the assessee on behalf of its customers, do not attract the provisions of Section 194-I of the Act."

17. Further, we have also perused the order of the CIT (A) in general and para 4.3 in particular. On perusal of the said para 4.3, we find the same is relevant here and the same reads as under:

> "4.3. since, the facts in the current year are same, I accordingly hold that the payments in regard to the Passenger Service Fee (PSF) are not in the nature of rent and also that the appellant was not liable to deduct TDS on the PSF payments to airport operators which are collected by the appellant from the passengers on behalf of airport operators. Accordingly, the demand of tax under section 201(1) and interest u/s 201(1A) of the Act aggregating to Rs. 2,29,02,139/- in respect of PSF payments is hereby directed to be deleted. "

18. From the above it is clear that the issue under consideration is squarely covered by the order of the Tribunal in the case of Jet Airways (India) Ltd (supra). Therefore, considering the same and

> respectfully following the said order of the Tribunal (supra), we are of the opinion that the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, grounds no. (i) & (ii) raised by the Revenue are dismissed."

It is also observed that the CBDT vide its Circular No. 21/2017 dated 12th June, 2017 has accepted the view of the Hon'ble Bombay High Court in the case of Jet Airways (India) Limited(supra) that section 194-I of the Act will not apply on payments made towards PSF charges. The said circular of the CBDT is reproduced below:-

"Circular No. 21/2017

F.No. 279/Misc./140/2015/ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 12th June, 2017

SUBJECT: Non-Applicability of the provisions of section 194-I of the I.T. Act, 1961 on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator - reg. -

Under the existing provisions contained in section 194-I of the Income Tax Act, 1961 ('the Act'), tax is required to be deducted at source on payment of rent. The term "rent" is defined in the Explanation to the said section to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any (a) land; or (b) building (including factory building); or (c) land appurtenant to a building (including factory building); or (d) machinery; or (e) plant; or (f) equipment; or (g) furniture; or (h) fittings, whether or not any or all of the above are owned by the payee.

2. A dispute arose on applicability of the provisions of section 194-I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport Operator. The Hon'ble High Court of Bombay in CIT vs. Jet Airways (India) Ltd. declined to admit the ground relating to applicability of provisions of section 194-I of the Act on PSF charges holding that no substantial question of law arises. While doing so it relied on the judgment of the Hon'ble Supreme Court dated 4.8.2015 in the case of Japan Airlines and Singapore Airlines where the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act.

3. The Board has accepted the above view of the High Court of Bombay. Accordingly, it is now a settled position that section 194-I of the Act, will not apply on PSF.

4. In view of the above, henceforth, appeals may not be filed by the Department on the above settled issue, and those already filed may be withdrawn/not pressed upon.

5. The above may be brought to the notice of all concerned.

6. Hindi version of the same will follow.

Sd/- 12-06-2017

(Neetika Bansal)

Deputy Secretary to Government of India."

Thus, keeping in view the factual matrix as discussed above in details, we hold that the payment of passenger service fees (PSF) paid by the assessee is not subject to deductibility of tax at source within the meaning of section 194-I of the Act and hence appellate order of learned CIT(A) is affirmed as it did not call for our interference . This disposes of ground no I & ii raised by

Revenue which stood dismissed. The appeal of the Revenue stood dismissed on ground no. (i) & (ii). We order accordingly.

The second issue is regarding short-deduction of tax at source on cargo handling charges incurred by the assessee wherein the assessee deducted tax at source u/s 194C while Revenue is contemplating that the tax was required to be deducted at source u/s 194J . The learned CIT(A) has given relief to the assessee by following decision of the tribunal in assessee's own case for assessment year's 2009-10,2010-11 and 2011-12 in ITA no. 4635-36/Mum/2012, 5114/Mum/2012 and 5115/Mum/2012 vide common orders dated 09-07-2014 wherein tribunal has held that tax is required to be deducted at source u/s 194C on CHC charges paid by the assessee. We have observed that the assessee had made the following payments towards CHC and the AO has worked out default u/s 201(1) for short deduction of tax at source on CHC , as under:-

Amount of payment	TDS deductible u/s 194J @ 10%	TDS deducted u/s 194C @ 2%	Default u/s 201(1)
Rs. 57,18,143	Rs. 5,71,814	1,14,363	Rs.4,57,451

We have observed that the issue is decided by the Tribunal in assessee's own case wherein the Mumbai-tribunal has held that cargo handling charges are subject to deduction of tax at source u/s 194C of the Act, vide its order in ITA No.4635/M/2012 for assessment year 2009-10 dated 09.07.2014, by holding as under:-

> " 6. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited decisions of the tribunal (supra).On perusal of the cited orders of the Tribunal (supra), we find that the issue under consideration is now stands covered in principle by the said orders of the Tribunal. We have gone through the order of the ITAT, Delhi Bench in the case **of Glaxo Smithkline Consumer Healthcare Ltd (supra)** and we find that

an identical issue was ajudicated by the Tribunal in favour of the assessee vide paras 3 to 8 of its order. For the sake of completeness of this order, the said relevant paras are reproduced here under:

> "3. We have considered the rival contentions carefully gone through the orders of the authorities below as well as provisions of the law contained under sections 194C and 194J of the Income-tax Act, 1961. In the instant case, from the record we found that the assessee had entered into clearing and forwarding agency agreements with various persons. On the payments made to the Clearing and Forwarding Agents, the assessee deducted tax at source under section 194C of the Act. The payment made by the assessee to the C&F Agents was for a consolidated set of services. The services included receipt and dispatch of goods, storing the goods, keeping accounts/records of the same, ensuring the safety of the goods, complying with formalities for effecting receipt and dispatch of goods, etc. The object of the agreements was to ensure handling and delivery of the goods as per the directions of the assessee. Since the services involved carrying out of "work" within the meaning of the said term in section 194C of the Act, the assessee, therefore, correctly deducted tax at source under the said section out of the payments made to C&F Agents. The Assessing Officer held that the services rendered by the C&F Agents were in the nature of managerial services and, therefore, tax should have been deducted on such payments under section 194J of the Act. The Assessing Officer, thus, treated the assessee as an assessee in default for short deduction of tax at source and accordingly computed tax payable under section 201{l) of the Act. Action of the Assessing Officer was confirmed by the CIT (Appeals).
>
> 4. We have carefully gone through the agreement entered into by the assessee with C&F Agents and perused the terms relating to services to be rendered by C&F Agents. We found that the C&F Agents was required to store, dispose, deliver or redeliver goods as may be determined and notified to such C&F Agents by the assessee. The C&F Agents was required to store the goods by the assessee with all care, prudence and responsibility so that such goods are free from risks as theft, pilferage and damages. **He shall have full responsibility in respect of clearing consignment, loading/unloading, carriage, cartage to and for the warehouse and godown of the agents, staking or storing.** He shall put such mark or marks in the warehouse to distinguish the goods of the assessee from the goods that such agents may receive from any other person. He shall indemnify the assessee against any loss in respect of the goods in its

custody. Furthermore, the C&F Agents undertake to deliver the goods or consignment to such persons or parties as nominated by the assessee, maintain and render proper account of goods or consignments received, stored, and delivered periodically and submit such statement to the assessee from time to time.

5. We also found that C&F Agents was liable for all damages, pilferage and other losses incurred due to negligence, etc., and undertake to pay on demand in writing made by the assessee without protest the market value of the goods entrusted to such agents. The goods of the assessee was to be received and held by the C&F Agents as bailee/trustee, for and on behalf of the assessee. The agreement entitled the agents for reimbursement of all approved expenses incurred on behalf of the assessee.

6. Thus, It is crystal clear from the terms of the agreement that payment was made by the assessee to the C&F Agents, was for consolidated set of services which have been broadly described above. The main object of the agreement was to ensure correct handling and delivery of goods as per the terms of the assessee. We found that as per the nature of services rendered, the same are in pari materiato to the services as contemplated under section 194C, and the same was not for any professional or technical services as mentioned under section 194J of the Act. As per section 194J{1) of the Act, any person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a resident any sum by way of (a) fee for professional services, or (b) fees for technical services, shall, at the time of credit of such sum 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 an amount of equal to five per cent of such sum as income-tax on income comprised therein. Explanation (a) and (b) to section 194J of the Act defines "professional services" and "fees for technical services" respectively. The same reads as under:

> Explanation.-for the purposes of this section:-
>
> (a)"professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural professional or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of sec ion 44AA or of this section;
>
> (b)"fees for technical services" shall have the same meaning as Explanation 2 to clause (vii) of sub-section (1) of section 9.

> Explanation 2 to section 9(1)(vii) of the Act "fees for technical services" to mean any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provisions of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

7. Thus, it is crystal clear from the provisions of section 194J that services of the agents are neither professional services nor technical services. Such services ore also clearly not in the nature of technical, consultancy or managerial services, therefore, tax in respect of these services are not to be deductible under section 194J of the Act. CB.D. T. in its Circular No. 720, dated 30-8-1995 had also provided that various provisions of Chapter XVII relating to deduction of tax at sources are mutually exclusive and that Chapter XVII deals with a particular kind of payment to the exclusion of all other sections in this Chapter. Thus, any payment of any sum shall be liable for deduction of tax only under one section, therefore, payment is also liable for tax deduction only under one section, as warranted by the nature of services stipulated therein. Combined reading of provisions of sections 194C and 194J vis-a-vis CB.D. T. Circular No. 720 makes it abundantly clear that in the instant case payment made by the assessee to the C&F Agents, was for the services which was pre-dominantly for "carrying out work", inter alia, relating to storage dispatch, transportation, loading and unloading of goods, etc. Thus, the assessee has rightly deducted tax at source under section 194C (If the Act.

8. In view of the above discussion, we are inclined to agree with the learned AR that assessee was not in default for deduction of tax as per provisions of section 194C at the rate of 2 per cent and that lower authorities were not justified for treating the services rendered to the assessee as falling under section 194J of the Act and thereby liable for deduction of tax at 5%."

7. We have also perused the order of the CIT CA) for the assessment year 2009-2010 and find that the para 5.2 and 5.3 of the said order of the CIT (A), dated 30.04.2012 are relevant here and the same read as under:

"5.2. In regard to this issue, also, the appellant has given various arguments and made submissions which are discussed in detail in my appellate order of even date for AY 2008-09. After the said discussion, I have in A Y 2008-2009 held as under:

> "5.7. I have considered the facts of the case, the submissions on behalf of the appellant as well as the AOs order on this issue. I agree with the contention that the Cargo Handling Charges paid by the appellant company are not in the nature of professional or technical services or royalty as specified u/s 194J. Further, the decision of the Hon'ble Delhi ITAT relied by the appellant is squarely on the same issue and is applicable to the case of the appellant. Hence, I hold that the provisions of section 194J are not attracted to the Cargo Handling Charges paid by the appellant. I am also of the considered opinion that the provisions of TDS u/s 194C are applicable to the payments in respect of Cargo Handling Charges. Thus, the demand of tax under section 201(1) of the Act of Rs. 30,480/- in respect of Cargo Handling Charges is hereby directed to be deleted."

5.3. Since, the fads in the current year are same, I accordingly hold that the provisions of section 194J are not attracted to the Cargo Handling Charges paid by the appellant. I am also of the considered opinion that the provisions of TDS u/s 194C are applicable to the payments in respect of Cargo Handling Charges. Thus, the demand of tax under section 201(1) of the Act at Rs. 3,03,930/- in respect of Cargo handling Charges is hereby directed to be deleted."

8. From the above, we find that while deciding the issue of whether the cargo handling charges paid by the assesssee attracts the provisions of section 194C or 194J, the CIT (A) has rightly adjudicated the issue by following the earlier year's orders of the Revenue Authorities as well as the order of the ITAT, Delhi in the case of Glaxo Smithkline Consumer Healthcare Ltd (supra). Considering the settled position of the issue and respectfully following the order of the ITAT, Delhi Bench, we of the opinion that the decision taken by the CIT (A) in deleting the demand of tax u/s 201(1) of the Act in respect of Cargo Handling Charges is fair and reasonable and it does not call for any interference. Accordingly, grounds No. (i) to (iv) raised by the Revenue is dismissed.

9. In the result, appeal of the Revenue is dismissed."

Respectfully following the above orders of the tribunal in assessee's own case, we do not find any infirmity in the order of the ld. CIT(A) and we uphold the

same by holding that payments towards CHC is subject to deduction of tax at source u/s 194C and not u/s 194J. We find that similar relief has also been granted by the Tribunal to the assessee in the subsequent years in ITA No. 5114/Mum/2012 for assessment year 2010-11 and also in ITA no.5115/M/2012 for assessment year 2011-12, vide common order dated 09-07-2014.Nothing contrary has been brought on record by learned DR before the Bench. Keeping in view of the consistent view taken by the Tribunal in assessee's own case for preceding years, we are not inclined to interfere with the findings of the Tribunal which has been followed by learned CIT(A) in his appellate order dated 22-02-2016 which stood confirmed. Thus , ground no (iii) and (iv) raised by Revenue in memo of appeal filed with the tribunal stood dismissed. Revenue fails on these grounds and appeal of the Revenue stood dismissed on these grounds of appeal raised before the tribunal. We order accordingly.

Next grounds being ground no. (v) and (vi) raised by Revenue in memo of appeal filed with the tribunal is w.r.t. levy of interest u/s 201(1A) on the demands raised by the AO on account of interest which is in consequence to orders passed by the AO u/s 201(A) holding assessee to be assessee in default for non deduction of tax at source on payments made towards PSF and for short deduction of tax at source on payments made towards CHC u/s 194C instead of Section 194J, we have already adjudicated issues arising out of orders passed u/s 201(1) on both the issues w.r.t. PSF charges and CHC charges in favour of assessee wherein demands raised by the AO u/s 201(1) stood deleted. Thus, in consequence demand raised by the AO towards interest u/s 201(1A) shall not survive and is hereby ordered to be deleted. Thus, ground no (v) and (vi) is also decided against Revenue. Revenue fails on these grounds also which stood dismissed. We order accordingly.

9. In the result, appeal of the Revenue in ITA No. 2355/Mum/2016 for assessment year 2012-13 is dismissed.

Order pronounced in the open court on 25th September, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांकः25.09.2017 को की गई ।

Sd/-	Sd/-
(SAKTIJIT DEY)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 25.09.2017

व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "C" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**