

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI BASKARAN B.R. (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)
I.T.A No.193/Mum/2022 - A.Y. 2016-17
I.T.A No.194/Mum/2022 - A.Y. 2017-18
I.T.A No.195/Mum/2022 - A.Y. 2018-19
I.T.A No.196/Mum/2022 - A.Y. 2019-20

Air India Ltd Finance Bldg, Old Airport Kalina, Santacruz (E) Mumbai-400 029 PAN : AACCN6194P	vs	Commissioner of Income-tax (Appeals), NFAC, Delhi
APPELLANT		RESPONDENT

Assessee represented by	Shri Rajnish Aggarwal
Department represented by	Shri Manoj Sinha

Date of hearing	11/07/2022
Date of pronouncement	/07/2022

ORDER

Per Kavitha Rajagopal, JM :

These appeals have been filed by the assessee as against the order of Ld.Commissioner of Income-tax (Appeals), NFAC, Delhi pertaining to assessment years 2016-17, 2017-18, 2018-19 and 2019-20.

2. The grounds of appeal in all these appeals pertain to the decision of JCIT that TDS on repair and maintenance of aircraft is in the nature of technical fees and not payment of fees for works contract and wrongly applying section 194(J) instead of section 194(C) of the I.T. Act and treating the assessee to be assessee in default. Since the grounds are identical in all the appeals, we pass a consolidated order taking ITA 193/Mum/2022 as the lead case.

3. The brief facts are that the assessee company, M/s Air India Ltd is in the business of transportation of passengers and cargo by air, mail, parcel, etc. The assessee being a Public Sector Unit as national carrier owns and operate aircrafts of different types. Air India Engineering Services Ltd (AIESL) is a wholly owned subsidiary of the assessee which is approved by DGCA for repairs and maintenance of aircraft placed in various cities, like Mumbai, Delhi, Kolkatta, Chennai, Hyderabad, etc. A survey action under section 133(2A) of the I.T. Act, 1961 was conducted in the finance department of the assessee on 13/01/2020 for the purpose of verifying compliance of TDS provisions. It was submitted that the assessee has paid Rs.8,58,12,303/- to M/s Air India Engineering Services Ltd (AIESL) for repairs / maintenance on which TDS @ 2% was made. The Assessing Officer concluded that the services were in the nature of fees for technical services which are liable for TDS @10% under section and determined Rs.68,64,984/- as shortfall of TDS alongwith interest of Rs.41,18,990/- under section 201(1A) was computed. Aggrieved by the order, the assessee was in appeal before the Ld.CIT(A), who confirmed the order of the Assessing Officer. Further aggrieved, the assessee is in appeal before us against the order of the Ld.CIT(A).

4. During the appellate proceedings, the Ld.AR for the assessee stated that the assessee was liable to deduct TDS under the provisions of section 194C instead of section 194J as, according to the assessee, the services rendered by AIESL was in the nature of 'fees for works contract' and not in the nature of 'fees for technical services' as alleged by the Ld.AO.

5. The Ld A.R stated that the recipient of the payment, viz., M/s AIESL has duly offered these payments as its income. Accordingly, he made an alternative submission that the benefit of proviso to sec. 201(1) may kindly be given to the

assessee. He further submitted that the assessee did not claim this benefit before the AO. It could not make this claim before Ld CIT(A) also, since the assessee could not represent before Ld CIT(A). He submitted that this claim is legal claim and accordingly he prayed that this alternative contention be accepted. The Ld A.R also furnished a statement showing the details of filing of returns of income by AIESL for all the years under consideration.

6. The Ld D.R did not object to the alternative prayer put forth by Ld A.R.

7. The proviso to sec. 201(1) reads as under:-

"201. (1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed¹⁷:

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax."

The above proviso states that the assessee shall not be treated as an "assessee in default", if it complies with certain conditions. It is the submission of Ld A.R

that M/s AIESL shall get the benefit of the proviso cited above, since it has already included the impugned payments as its income. When it was pointed out by the bench that the assessee is required to furnish a certificate from an accountant in order to avail the benefit of the proviso, the Ld A.R submitted that the assessee shall submit the same before the AO.

8. Having heard rival submissions, we are of the view that, in the interest of natural justice, the alternative contention of the assessee may be accepted. However, the claim of the assessee requires verification at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) and restore the alternative contention in all the years under consideration to the file of the AO for examining it in accordance with law. Since the alternative contention is accepted, we are not adjudicating the main grounds of appeal urged by the assessee.

9. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

10. In the result, all the appeals of the assessee are treated as allowed for statistical purposes.

7. The appeals are allowed, for statistical purpose.

Order pronounced in the open Court on 15th July, 2022.

Sd/-

sd/-

(B.R. BASKARAN)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 15/07/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai