

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.7403/Mum/2018
(Assessment Year: 2012-13)

DCIT(IT)-1(2) Room No.814,8 th Floor K.G.Mittal Hospital Building Charni Road(West) Mumbai-400 022	Vs.	Dish TV India Ltd. (Formerly known as Videocon D2H Ltd.) Zone 5, TFCH Web Centre New Link Road Behram Baug Oshiwara, Jogeshwari (W) Mumbai-400 012
		PAN/GIR No.AACCB1409R
Appellant)	..	Respondent)

Revenue by	Shri Abhijit Patankar, CIT-DR
Assessee by	Shri Shailesh S.Shah, AR
Date of Hearing	20/01/2020
Date of Pronouncement	29/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-60, Mumbai, dated 31/10/2018 and it pertains to Assessment Year 2012-13..

2. The revenue has raised the following grounds of appeal:-

(i) Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is justified in deleting the addition made u/s 194H, without appreciating the fact that the relationship between the assessee company and its distributors was in the nature of principle agent relationship and hence the payment made by the company to its distributors in the form of discount falls within the meaning of section 194H of the Act

(ii) Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is justified in deciding the issue by relying upon the decision of Hon'ble Karnataka High Court in the case of 'Bharti Airtel Ltd, 372 ITR 33, as said decision of the Hon'ble Karnataka High Court has not been accepted by the Department and SLP has been filed before the Hon'ble Apex Court.

(iii) Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is justified Jif deleting the interest u/s. 201(1A) of Rs.3,72,11,418/- raised u/s 201(1A) of the Act, on account of non-deduction of TDS, as this non deduction has been deleted by him without appreciating that the same is also the subject matter of further appeal as mentioned above.

(iv) Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is justified in allowing assessee's appeal by holding that the payments made to Installation Service Providers (ISP) fall within a purview of section 194C & not under in the Provision of section 194J of the I.T, Act, without appreciating the factual perspective which clearly shows that the payment made by the asses see deductor is on account of specialized technical service such as installation work of dish Antenna & incidental hardware i.e. DTH apparatus of the premises of the subscriber requiring highly skilled Personnel and cannot be done by any layman even after reading the installation Manual

(v) Whether, on the facts and in the circumstances of the ease and in law (he Ld.CIT(A) is justified in holding that the provisions as contained in 194C are applicable to the payment pertaining to 'Installation Service Providers' without properly appreciating the factual & legal matrix brought out by the AO in order u/s 201(1)/201(1A).

(vi) Whether, on the facts and in the circumstances of the case and fn law the Ld. CIT(A) is justified in deleting the interest u/s. 201(IA) of Rs.1,96,13,781/- on the issue of installation service provider, as Hits short deduction has been deleted by him without appreciating that the same is also the subject matter of further appeal, as mentioned above.

(vii)The appellant craves leave to amend or alter any ground or add a new ground which may be necessary at the time of the hearing of the case or thereafter

3. The brief facts of the case are that the assessee company is engaged in the business of providing Direct to Home (DTH) services in the name of Videocon d2h, for which the license is given by Ministry of Information & Broadcasting, Government of India. The assessee has entered into agreements with various distributors for

distribution/sale of Set-top Boxes (STB) , prepaid vouchers, recharge vouchers, top-up vouchers etc. The assessee has also entered into agreements with various service providers at various locations for carrying out the work of installations of STB and dish antenna. As per the terms of agreement between the parties, the distributors/dealers are allowed discounts on sale of STB and recharge voucher from their maximum Retail Price (MRP). The distributor/dealer can sell these items to the customers at a price not exceeding the MRP. As regards, the installation charges paid for installation of STB and dish antenna, the assessee has paid service charges to service providers and has deducted tax at source u/s 194C of the I.T.Act, 1961, whereas no tax has been deducted, in respect of discount offered on sale of STB and recharge vouchers to distributors/dealers. The Ld. AO had issued show cause notice u/s 201(1) of the I.T.Act, 1961 and called upon the assessee to explain as to why TDS applicable, as per the provision of section 194H shall not be computed for commission paid to distributors/dealers for sale of STB and pre-paid vouchers. The Ld. AO had also issued show cause notice and called upon the assessee to explain as to why, short fall in TDS deducted on payment made to service providers for installation of dish antenna and STB u/s 194J of the I.T.Act, 1961. The assessee has filed detailed submission and argued that no TDS is applicable, in respect of discount offered to dealers for sale of STB and recharge coupons. In respect of service charges paid to service providers for installation of STB and dish antenna, it was claimed that it has rightly deducted TDS, as per the provision of section 194C of the Act. The Ld. AO did not convince with arguments of the assessee and computed short deduction of TDS u/s 194H, in respect of commission offered to distributors/dealers, for sale of STB and

recharge coupons. The Ld. AO has also computed short deduction of TDS u/s 201(1) and 201(1A), in respect of service charges paid to service providers for installation of STB and dish antenna u/s 194J, as against the assessee application of provisions of section 194C of the I.T.Act, 1961.

4. The assessee carried the matter in appeal before the first appellate authority. Before the Ld.CIT(A), the assessee has filed elaborate written submissions on the issue, which has been reproduced at page 3-40 of Ld.CIT(A) order. The sum and substance of the arguments of the assessee, before the Ld.CIT(A) are that the provision of section 194H has no application, in respect of discount offered to distributors/dealers for sale of STB and recharge coupons, because the said agreement is on principal to principal basis and the title and ownership in goods has been transferred to distributors/dealers. Insofar as, service charges paid to service providers for installation of STB and dish antenna, the contract between the parties is in the nature of works contract, which comes under the provisions of section 194C of the Act and accordingly, it has rightly deducted TDS, as per section 194C of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee, deleted additions made by the Ld. AO towards short computation of TDS and interest u/s 201(1) and 201(1A) of the Act, in respect of discount offered to distributors/dealers, on the ground that the arrangement between the parties is on principal to principal basis. Similarly, the Ld.CIT(A) has deleted additions made by the Ld. AO towards short deduction of TDS, in respect of payment made to service providers for installation of STB and dish antenna.

Aggrieved by the Ld.CIT(A) order , the revenue is in appeal before us.

5. The first issue that came up for our consideration from ground NO. 1 to 3 of revenue appeal is applicability of provision of section 194H, in respect of discount offered to distributors/dealers for sale of STB and recharge coupons. The Ld. AR, for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai 'B' bench in assessee's own case in ITA No. 7200/Mum/2012 and 7201/Mum/2012 for AY 2010-11 and 2011-12, where the issue has been considered, in light of the agreement between the parties and held that discount offered to distributors/dealers is on principal to principal basis, which does not fall under the provisions of section 194H of the Act.

6. The Ld. DR, on the other hand, fairly accepted that the issue is covered in favour of the assessee by the decision of ITAT, in the case of Videocon2 DTH Ltd vs DCIT(TDS) Mumbai, in ITA No.7047/Mum/2012 for AY 2010-11, but he has strongly supported order of the Ld. AO.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the co-ordinate bench of 'B' bench Mumbai, in the case of M/s Videocon d2h Ltd. vs DCIT in ITA No. 7200/Mum/2012 and 7201/Mum/2012 for AY 2010-11 and 2011-12, where under identical set of facts and on basis of similar agreement between the parties, the Tribunal held that discount offered to distributors/dealers is on the principal to principal basis

which does not come under the definition of commission, as defined u/s 194H of the I.T.Act, 1961. The relevant findings of the Tribunal are as under;-

5. It is clear from the above terms and conditions of the agreement entered by the assessee which in parameteria with the terms and conditions having been discussed by the Karnataka High Court and ITAT, Ahmedabad Bench in case of Vodafone Essar Ltd., we do not find any merit in the action of the lower authorities for treating the assessee in default in respect of non-deduction of tax at source on trade discount granted to principal distributor by holding the same as commission, hence liable for deduction of tax at source under the provisions of [Section 194H](#) of the IT Act.

8. In this view of the matter and consistent with view taken by the co-ordinate bench, we are of the considered view that discount offered to distributor/dealers is not in the nature of commission, as defined u/s 194H of the Act, and the assessee shall not required to deduct tax at source on said payment. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the Ld. AO towards non levy of TDS u/s 194H of the I.T.Act, 1961 and hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue.

9. The next issue that came up for our consideration from ground NO. 4 to 6 of appeal is short levy of TDS, in respect of service charges paid to service providers for installation of STB and dish antenna. The Ld. AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Mumbai 'B' bench in the case of M/s Videocon d2h Ltd vs DCIT in ITA No. 7200/Mum/2012 and 7201/Mum/2012 for AY 2010-11 and 2011-12, where it has been decided that services charges paid to

service providers is in the nature of works contracts and hence, the assessee has rightly deducted TDS u/s 194C of the I.T.Act, 1961.

10. The Ld. DR fairly accepted that the issue is covered in favour of the assessee by the decision of ITAT, in assessee own case for earlier years, but he strongly supported order of the Ld. AO.

11. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the co-ordinate bench of Mumbai, ITAT in assessee own case for AY 2010-11 and 2011-12, where under identical set of facts, it has been held that service charges paid to service providers is in the nature of works contracts and hence, the assessee has rightly deducted TDS u/s 194C of the I.T.Act, 1961. The relevant findings of the Tribunal are as under:-

10. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that the assessee company is the service provider of Direct to Home [DTH] services in the name of Videocon d2h'. DTH service is a mode by which television signals are provided directly at the home of the subscribers, without passing through any intermediary. The Set-Top Box at the premises of the subscribers receives such signals directly through the Dish Antenna and such signals are viewed on the television by the subscriber. As the work of installing the set-top boxes and antenna has to be carried out at various locations of the different subscribers, the assessee company has entered into a contract/ agreement with various persons [Installation Service Providers (ISPs)]. The AO on perusal of details in this regard was of the view that the work relating to installation of hardware at the customer's/subscriber's ITA No.7047/Mum/2012 and other appeals M/s. Videocon d2h Limited premises is carried out by a technically skilled person as the software is to be synchronized with the TV set to provide the DTH services and other technical services are also to be rendered. We observe that the work of installation of Set-Top Boxes and Antenna at the premises of the end-user is given as per the contract with Installation Service Providers (ISPs). The job of the Installation Service Provider is to go to the premises of the subscriber, to install Dish Antenna and Set-Top Box and connect them to the Television of the subscriber. The Installation

Service Provider has to connect the Set-top Box to the Television by making few basic wiring connections. It does not require any special technical expertise or any technical degree and it can be done by any sound person on reading through the installation manual. Also, there is no specific qualification or recognized course required for Installation Service Provider to become eligible for installation of Dish and Set-Top Box. They are given basic training/instructions for a short period to make them understand the process of Installation so that they can apply the same at the place of the subscriber. Accordingly, the CIT(A) was justified in holding that assessee was required to deduct tax u/s.194C of the Act. The CIT(A) has dealt with the issue threadbare and after relying on various judicial pronouncements held that work of installation of Set-Top box amounts to 'works contract. The detailed finding so recorded by CIT(A) are as per material on record which has not been controverted by Id. DR by bringing any positive material.

Accordingly, we do not find any reason to interfere in the order of CIT(A) holding that installation of Set-Top Box amounts to works contract and no ITA No.7047/Mum/2012 and other appeals M/s. Videocon d2h Limited technical expertise are required so as to make the assessee liable under the provisions of [Section 194J](#) of the IT Act.

12. In this view of the matter and consistent with view taken by the co-ordinate bench in assessee own case for earlier years, we are of the considered view that service charges paid to service providers for installation of STB and dish antenna is in the nature of works contract and accordingly, the assessee has rightly deducted TDS u/s 194 C of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the Ld. AO towards short deduction of TDS on service charges u/s 201(1) and 201(1A) of the I.T.Act, 1961. Hence, we are inclined to uphold the order of the Ld.CIT(A) and reject ground taken by the revenue

13. In the result, appeal filed by the revenue is dismissed

Order pronounced in the open court on this 29 /01/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai