

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.909/Ind/2019
Assessment Year:2015-16**

M/s. Arihant Charitable Trust, 283-A, Gumasta Nagar, Indore	बनाम/ Vs.	ITO(TDS) Indore
(Appellant)		(Revenue)
P.A. No.AAAAAA0654R		
Appellant by	Shri S.N. Agrawal, CA	
Revenue by	Shri Puneet Kumar, Sr.-DR	
Date of Hearing:		27.08.2020
Date of Pronouncement:		31.08.2020

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)(in short 'Ld. CIT(A)-1, Indore dated 03.07.2019 pertaining to assessment year 2015-16.

The assessee has raised following grounds of appeal:

“That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in concurring with the opinion of the assessing officer in treating the amount paid towards collection and disposal of waste as a technical service liable for deduction

of tax under section 194J of the Act even when the appellant had paid the said amount in pursuance to a contract and therefore TDS was rightly deducted under section 194C of the Act.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming demand of Rs.6,948/- on account of short deduction of tax at source without properly appreciating the facts of the case and submissions made before him even when payee had already offered the said amount as its income and had paid legitimate amount of tax due on the same.

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming demand of Rs.2,073/- on account of interest on short deduction of tax at source without properly appreciating the facts of the case and submissions made before him.

4. The appellant reserves its right to add, alter and modify the grounds of appeal as taken by it.”

2. The facts giving rise to the present appeal are that the assessee deductor M/s. Arihant Hospital & Research Centre is a unit of M/s. Arihant Charitable Trust, Indore. A survey action u/s 133A of the income Tax Act 1961 (hereinafter referred as the 'Act') was conducted on 15.05.2014 to verify the TDS compliances. During the course of survey proceedings, statement of Shri Mahendra Bagani, director of M/s. Arihant Hospital & Research Centre was recorded. Thereafter, a show cause notice u/s 201(1)/201(1A) was issued to the assessee calling upon to explain as to why it should not be declared as assessee in default on account of non-deduction of tax @10% u/s 194J instead of services rendered by M/s. Hoswin Incinerator P. Ltd. as the service provided is technical in nature. In

response thereto the assessee submitted its response same was not accepted by the assessing officer and declared the assessee in default u/s 201 and proceeded to make addition of Rs.2316/- and interest on non-deduction of Rs.608/- amounting to Rs.6,948/- vide order dated 31st March, 2017.

3. Aggrieved against this order assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions sustained the addition.

4. Now the assessee is in appeal before this Tribunal.

5. Ground No.1 is against the treating the assessee in default for deducting tax u/s 194C of the Act. Ground No.2 is making addition for non-deduction of tax at Rs.6,948/- and ground no.3 is against making addition on account of interest of non-deduction of tax of Rs.2073/-. However ground No.4 is general in nature which needs no adjudication.

6. Apropos to Ground Nos. 1 to 3 Ld. counsel for the assessee reiterated the submissions as made in the written synopsis. For the sake of clarity submissions of the assessee are reproduced as under:

A.1] The present appeal is filed by the appellant against the order of the Ld CIT (A)-1, Indore dated 03-07-2019.

A.2] A TDS Survey under section 133A of the Income-Tax Act, 1961 was conducted on the premises of the appellant on 15-05-2014 to verify the TDS compliances.

A.3] During the course of TDS Survey proceedings, the assessing officer opined that the appellant was liable to deduct TDS at the rate of 10%

under section 194J of the Income-Tax Act, 1961 instead of TDS deducted by the appellant at the rate of 2% under section 194C of the Income-Tax Act, 1961 on the payments made to M/s Hoswin Incinerator Private Limited for collection and disposal of waste.

A.4] The assessing officer subsequently passed an order under section 201(1)/201(1A) of the Income-Tax Act, 1961 dated 31-03-2017 wherein he determined demand on account of short-deduction of tax at Rs. 6,948/- and interest on such short-deduction of tax at Rs. 2,073/- on the payments made to M/s Hoswin Incinerator Private Limited for collection and disposal of waste wherein TDS was deducted at the rate of 2% under section 194C of the Income-Tax Act, 1961 instead of 10% under section 194J of the Income-Tax Act, 1961 as opined by the assessing officer.

A.5] The appellant preferred an appeal before the Ld CIT(A)-1, Indore against the order of the assessing officer. The Ld CIT(A)-1, Indore dismissed the appeal filed by the appellant observing that the appellant had entered into a contract with M/s Hoswin Incinerator Private Limited for rendering technical services on which TDS should have been deducted under section 194J of the Income-Tax Act, 1961.

A.6] The appellant has therefore preferred an appeal before the Hon'ble Bench against the order of the Ld CIT (A)-1, Indore and has taken the following grounds of appeal:

1] That on the facts and in the circumstances of the case and in law, the Ld CIT [A] erred in concurring with the opinion of the assessing officer in treating the amount paid towards collection and disposal of waste as a technical service liable for deduction of tax under section 194J of the Act even when the appellant had paid the said amount in pursuance to a contract and therefore TDS was rightly deducted under section 194C of the Act.

2] That on the facts and in the circumstances of the case and in law, the Ld CIT [A] erred in confirming demand of Rs. 6,948/- on account of short deduction of tax at source without properly appreciating the facts of the case and submissions made before him even when payee had already offered the said amount as its income and had paid legitimate amount of tax due on the same.

3] That on the facts and in the circumstances of the case and in law, the Ld CIT [A] erred in confirming demand of Rs. 2,073/- on account of interest on short deduction of tax at source without properly appreciating the facts of the case and submissions made before him.

4] The appellant reserves its right to add, alter and modify the grounds of appeal as taken by it.

1] GROUND NO. 1 TO 3 – CHALLENGING THE DEMAND AS CREATED ON ACCOUNT OF SHORT-DEDUCTION OF TAX AND INTEREST ON SUCH SHORT-DEDUCTION OF TAX ON THE PAYMENTS MADE TO HOSWIN INCINERATOR PRIVATE LIMITED

1.1] The appellant in these grounds of appeal has challenged the demand of Rs. 6,948/- and Rs. 2,073/- as created on account of short-deduction of tax and interest on such short-deduction of tax respectively on the payments made to M/s Hoswin Incinerator Private Limited for collection and disposal of waste generated in the hospital run by the appellant.

1.2] The appellant deducted TDS at the rate of 2% under section 194C of the Income-Tax Act, 1961 on the payments made to M/s Hoswin Incinerator Private Limited for collection and disposal of waste whereas the assessing officer opined that TDS ought to have been deducted at the rate of 10% under section 194J of the Income-Tax Act, 1961 and therefore, he determined demand on account of short-deduction of tax at Rs. 6,948/- and interest on such short-deduction of tax at Rs. 2,073/-. Quarter-wise details of demand as determined by the assessing officer are as under:

[Page No. 29-36]

S. No	Quarter	Amount paid [in Rs.]	TDS deducted [in Rs.]	TDS deductible [in Rs.]	Short Deduction [in Rs.]	Interest [in Rs.]	Total demand [in Rs.]
1	1	21,840	447	2,184	1,737	603	2,340
2	2	14,560	298	1,456	1,158	376	1,534
3	3	21,840	447	2,184	1,737	486	2,223
4	4	29,120	596	2,912	2,316	608	2,924
	Total	87,360			6,948	2,073	9,021

1.3] The appellant entered into a contract with M/s Hoswin Incinerator Private Limited for collection and disposal of waste and M/s Hoswin Incinerator Private Limited did not provide any technical services to the appellant which was liable for deduction of tax at the rate of 10% under section 194J of the Income-Tax Act, 1961. The said party merely collected waste from the hospital of the appellant and disposed it off accordingly and henceforth, the appellant rightly deducted TDS at the rate of 2% under section 194C of the Income-Tax Act, 1961 pursuant to a contract entered into between the appellant and M/s Hoswin Incinerator Private Limited.

1.4.1] The Ld CIT(A)-1, Indore dismissed the appeal filed by the appellant observing that the appellant failed to controvert the findings of the assessing officer given at Para 3.3 & 3.4 of the assessment order. Hence,

it assumes significant importance to go through the findings of the assessing officer given in Para 3.3 & 3.4 of the assessment order.

1.4.2] The assessing officer in Para 3.3 of the assessment order observed that the nature of services rendered by M/s Hoswin Incinerator Private Limited involve element of technical consultancy which requires professional expertise within Explanation (a) of section 194J of the Income Tax Act and the managerial services as per Explanation 2 to clause (vii) of sub-section (1) of section 9 are also an integral part of the scheme of services rendered by the service provider to the appellant.

1.4.3] Further, the assessing officer in Para 3.4 of the assessment order observed that these services are covered under section 194J of the IT Act since the Central Government has made various Rules, Notifications and Orders under sections 6, 8 and 25 of the Environment Protection Act, 1986 including the Bio-medical wastes (Management & Handling) Rules, 1998.

1.5.1] At the outset, the moot question which arises for consideration is whether the payments made by the appellant to M/s Hoswin Incinerator Private Limited for collection and disposal of waste shall fall within the ambit of 'fees for professional services' as per Explanation (a) to section 194J of the Income-Tax Act, 1961 or within the ambit of 'fees for technical services' as per Explanation 2 to clause (vii) of sub-section (1) of section 9 of the Income-Tax Act, 1961 so as to attract the provisions of section 194J of the Income-Tax Act, 1961.

1.5.2] The relevant extract of section 194J and Explanation 2 to clause (vii) of sub-section (1) of section 9 of the Income-Tax Act, 1961 which are relevant for the facts of the present case are reproduced hereunder for your ready reference:

'194J. Fees for professional or technical services.

(1) 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) fees for professional services, or

(b) fees for technical services or

(ba)

(c)

(d)

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 equal to ten per cent of such sum as income-tax on income comprised therein:

.....

.....

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 profession 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 section 44AA or of this section;
- (b) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

9. Income deemed to accrue or arise in India.

(1) The following incomes shall be deemed to accrue or arise in India:—

(i)

.....

.....

(vii) income by way of fees for technical services payable by—

(a)

(b)

(c)

.....

Explanation 2.—For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision 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";

1.5.3] In light of the relevant extract of section 194J and Explanation 2 to clause (vii) of sub-section (1) of section 9 of the Income-Tax Act, 1961 as reproduced hereinabove, the observations of the assessing officer are categorically dealt with hereunder for your ready reference:

1.6.1] The first observation of the assessing officer was that the nature of services rendered by M/s Hoswin Incinerator Private Limited involve element of technical consultancy which requires professional expertise within Explanation (a) of section 194J of the Income-Tax Act, 1961.

1.6.2] It is pertinent to note that Explanation (a) of section 194J of the Income-Tax Act, 1961 exhaustively defines 'professional services' as services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board.

1.6.3] The professional services as defined in Explanation (a) of section 194J of the Income-Tax Act, 1961 include various specific services rendered by professionals which does not include any services related to waste collection and disposal. The contention of the assessing officer that these services involve element of technical consultancy is absolutely irrelevant as no technical consultancy whatsoever was offered by M/s Hoswin Incinerator Private Limited to the appellant. The service provider, M/s Hoswin Incinerator Private Limited disposed off waste in its plant at high temperature under the supervision of technicians/ professionals as envisaged by the assessing officer but it cannot by any stretch of imagination lead to an inference that any sort of technical consultancy was being offered to the appellant.

1.6.4] The Hon'ble ITAT Delhi Bench 'F' in the case of ITO, Rohtak v. Akon Electronics India (P.) Ltd. as reported in [2018] 97 taxmann.com 176 (Delhi - Trib.) has dealt with the aspect of 'technical consultancy' and has held that: [Page No. 37-40]

"11. Ld.AO has alleged the activities rendered by BEL to assessee within the ambit of section 194J of the act vis-a-vis section 194C as per assessee. Explanation 2 Section 194J carves out exemption, wherein any consideration made towards any construction, assembly, mining or like undertaken project by A recipient, would not be included within the purview of section 194J of the Act. Section 194J refers to definition of 'fees for technical services', as having same meaning as per Explanation 2 to sub-clause (vii) of subsection (1) of section 9. In our considered opinion the agreement very clearly spells out that BEL undertook assembling of raw materials provided by assessee in respect of modules M1 and M2, as per specifications provided by assessee. No doubt certain training has been provided by assessee to the engineers of BEL, however these rendering of training has been separately remunerated by BEL to assessee. Thus in our considered opinion payment received by BET L towards the work carried on under Phase II of the agreement, will not fall under the definition of the term professional services as no new technical consultancy has been offered by BEL to assessee. We therefore do not find any fault in the observations of Ld.CIT (A) in holding that the work undertaken by BEL is covered under the provisions of section 194C. Accordingly we dismiss the ground raised by the revenue."

[Emphasis Supplied]

1.6.5] In view of the above discussion and judicial precedent cited supra, it is quite clear that payments made by the appellant to M/s Hoswin Incinerator Private Limited for collection and disposal of waste did not fall within the purview of 'Fees for Professional Services' so as to attract the provisions of section 194J of the Income-Tax Act, 1961.

1.7.1] The second observation of the assessing officer was that these services were technical services as per Explanation 2 to clause (vii) of sub-section (1) of section 9 of the Income-Tax Act, 1961.

1.7.2] It is pertinent to note that Explanation 2 to clause (vii) of sub-section (1) of section 9 of the Income-Tax Act, 1961 exhaustively defines 'fees for technical services' as consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel).

1.7.3] At the outset, it is worth highlighting that for any payment to fall within the purview of 'fees for technical services', it is of utmost importance that payment is made for 'services' which are 'technical in nature'.

1.7.4] It has been categorically stated on Page No. 424-425 of the Eleventh Edition of Kanga & Palkhivala's "The Law and Practice of Income Tax" that if the payment is made for availing Standard Facilities, then, it would not be termed as "Fees for Technical Services". [Page No. 41-42]

1.7.5] The Hon'ble Supreme Court of India in the case of CIT-4, Mumbai v. Kotak Securities Ltd. as reported in [2016] 383 ITR 1 (SC) had an occasion to elaborately discuss the difference between "facilities" and "services" and the Hon'ble Supreme Court of India has categorically held that "Technical services" like "Managerial and Consultancy service" would denote seeking of services to cater to the special needs of the consumer/user as may be felt necessary and the making of the same available by the service provider and if there is nothing special, exclusive or customized in the service, then, such services, would undoubtedly be termed as "facilities" and will not tantamount to "technical services" so as to attract the provisions of section 194J of the Income-Tax Act, 1961. The relevant extract from the judgment of the Hon'ble Supreme Court of India is reproduced hereunder for your ready reference: [Page No. 43-48]

"6. What meaning should be ascribed to the word "technical services" appearing in Explanation 2 to clause (vii) to Section 9(1) of the Act is the moot question. In CIT v. Bharti Cellular Ltd. [2011] 330 ITR 239/[2010] 193 Taxman 97 this Court has observed as follows:

'Right from 1979, various judgments of the High Courts and Tribunals have taken the view that the words "technical services" have got to be read in the narrower sense by applying the rule of noscitur a sociis, particularly, because the words "technical services" in section 9(1)(vii), read with

Explanation 2 comes in between the words "managerial and consultancy services".'

7. "Managerial and consultancy services" and, therefore, necessarily "technical services", would obviously involve services rendered by human efforts. This has been the consistent view taken by the courts including this Court in *Bharti Cellular Ltd's. case* (supra). However, it cannot be lost sight of that modern day scientific and technological developments may tend to blur the specific human element in an otherwise fully automated process by which such services may be provided. The search for a more effective basis, therefore, must be made.

8. A reading of the very elaborate order of the Assessing Officer containing a lengthy discourse on the services made available by the Stock Exchange would go to show that apart from facilities of a faceless screen based transaction, a constant upgradation of the services made available and surveillance of the essential parameters connected with the trade including those of a particular/single transaction that would lead credence to its authenticity is provided for by the Stock Exchange. All such services, fully automated, are available to all members of the stock exchange in respect of every transaction that is entered into. There is nothing special, exclusive or customised service that is rendered by the Stock Exchange. "Technical services" like "Managerial and Consultancy service" would denote seeking of services to cater to the special needs of the consumer/user as may be felt necessary and the making of the same available by the service provider. It is the above feature that would distinguish/identify a service provided from a facility offered. While the former is special and exclusive to the seeker of the service, the latter, even if termed as a service, is available to all and would therefore stand out in distinction to the former. The service provided by the Stock Exchange for which transaction charges are paid fails to satisfy the aforesaid test of specialized, exclusive and individual requirement of the user or consumer who may approach the service provider for such assistance/service. It is only service of the above kind that, according to us, should come within the ambit of the expression "technical services" appearing in Explanation 2 of Section 9(1)(vii) of the Act. In the absence of the above distinguishing feature, service, though rendered, would be mere in the nature of a facility offered or available which would not be covered by the aforesaid provision of the Act.

9. There is yet another aspect of the matter which, in our considered view, would require a specific notice. The service made available by the Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which the charges in question had been paid by the appellant-assessee are common services that every member of the Stock Exchange is necessarily required to avail of to carry out trading in securities in the Stock Exchange. The view taken by the High Court that a member of the Stock Exchange has an option of trading through an alternative mode is not correct. A member who wants to conduct his daily business in the Stock Exchange has no option but to

avail of such services. Each and every transaction by a member involves the use of the services provided by the Stock Exchange for which a member is compulsorily required to pay an additional charge (based on the transaction value) over and above the charges for the membership in the Stock Exchange. The above features of the services provided by the Stock Exchange would make the same a kind of a facility provided by the Stock Exchange for transacting business rather than a technical service provided to one or a section of the members of the Stock Exchange to deal with special situations faced by such a member(s) or the special needs of such member(s) in the conduct of business in the Stock Exchange. In other words, there is no exclusivity to the services rendered by the Stock Exchange and each and every member has to necessarily avail of such services in the normal course of trading in securities in the Stock Exchange. Such services, therefore, would undoubtedly be appropriate to be termed as facilities provided by the Stock Exchange on payment and does not amount to "technical services" provided by the Stock Exchange, not being services specifically sought for by the user or the consumer. It is the aforesaid latter feature of a service rendered which is the essential hallmark of the expression "technical services" as appearing in Explanation 2 to Section 9(1)(vii) of the Act.

10. For the aforesaid reasons, we hold that the view taken by the Bombay High Court that the transaction charges paid to the Bombay Stock Exchange by its members are for 'technical services' rendered is not an appropriate view. Such charges, really, are in the nature of payments made for facilities provided by the Stock Exchange. No TDS on such payments would, therefore, be deductible under Section 194J of the Act.”

[Emphasis

Supplied]

1.7.6] Further, the Hon'ble Madras High Court in the case of Skycell Communications Ltd. v. DCIT as reported in [2001] 251 ITR 53 (Madras) has categorically held that the facility which remains the same irrespective of the customer shall not partake the nature of "Fees for Technical Services". The relevant extract from the said judgment is reproduced hereunder for your ready reference: [Page No. 49-51]

“7. In the modern day world, almost every facet of one's life is linked to science and technology inasmuch as numerous things used or relied upon in every day life is the result of scientific and technological development. Every instrument or gadget that is used to make life easier is the result of scientific invention or development and involves the use of technology. On that score, every provider of every instrument or facility used by a person cannot be regarded as providing technical service.

10. Installation and operation of sophisticated equipments with a view to earn income by allowing customers to avail of the benefit of the user of such equipment, does not result in the provision of technical service to the customer for a fee.

11. When a person decides to subscribe to a cellular telephone service in order to have the facility of being able to communicate with others, he does not contract to receive a technical service. What he does agree to is to pay for the use of the airtime for which he pays a charge. The fact that the telephone service provider has installed sophisticated technical equipment in the exchange to ensure connectivity to its subscriber, does not on that score, make it provision of a technical service to the subscriber. The subscriber is not concerned with the complexity of the equipment installed in the exchange, or the location of the base station. All that he wants is the facility of using the telephone when he wishes to, and being able to, get connected to the person at the number to which he desires to be connected. What applies to cellular mobile telephone is also applicable to fixed telephone service. Neither service can be regarded as 'technical service' for the purpose of section 194J.

14. 'Technical service' referred to in section 9(1)(vii) contemplates rendering of a 'service' to the payer of the fee. Mere collection of a 'fee' for use of a standard facility provided to all those willing to pay for it does not amount to the fee having been received for technical services."

[Emphasis Supplied]

1.7.7] In view of the findings given by the Hon'ble Supreme Court of India and Hon'ble Madras High Court in the judicial precedents cited supra, it is quite clear that facility of waste collection and disposal provided by M/s Hoswin Incinerator Private Limited to the appellant shall not tantamount to 'technical services' since the service provider, M/s Hoswin Incinerator Private Limited runs bio-medical waste treatment facility in Indore wherein it disposes off the bio-medical waste collected from all the hospitals and nursing homes situated in Indore and nearby places. The facility of waste collection and disposal provided by M/s Hoswin Incinerator Private Limited is not something which the service provider provides exclusively to the appellant catering to its specialized, exclusive and individual requirement. Rather, the facility of waste collection and disposal is provided on a standardized and uniform basis to all the hospitals and nursing homes of the city. It is quite clearly laid down by the Hon'ble Supreme Court of India that only those services which satisfy the aforesaid test of specialized, exclusive and individual requirement of the user or consumer should come within the ambit of the expression "technical services" appearing in Explanation 2 of Section 9(1)(vii) of the Act. Hence, in view of the detailed analysis and findings of the Hon'ble Supreme Court of India, it can be satisfactorily concluded that payment made by the appellant to M/s Hoswin Incinerator Private Limited for

collection and disposal of waste cannot by any stretch of imagination be considered as “Fees for Technical Services” so as to attract the provisions of section 194J of the Income-Tax Act, 1961.

1.8.1] Further, it is also a well settled position of law that provision of section 194J of the Income-Tax Act, 1961 would have application only when the technology or technical knowledge of a person is made available to others and not where by using technical systems, services are rendered to others.

1.8.2] The Hon’ble ITAT Jaipur Bench ‘A’ in the case of Jaipur Vidyut Vitran Nigam Ltd. v. DCIT as reported in [2009] 123 TTJ 888 (Jaipur) has categorically held that:

“9.6. An analysis of above cases lays down the proposition that section 194J would have application only when the technology or technical knowledge of a person is made available to others and not where by using technical systems, services are rendered to others. Rendering of services by allowing use of technical system is different than charging fees for rendering technical services. The applicability of section 194J would come into effect only when by making payment of fee for technical services, assessee acquired certain skill/knowledge/intellect which can be further used by him for its own purpose/research. Where facility is provided by use of machine/robot or where sophisticated equipments are installed and operated with a view to earn income by allowing the customers to avail of the benefit by user of such equipment, the same does not result in the provision of technical service to the customer for a fee. Similar is the proposition laid down in other cases relied by the learned Authorised Representative supra.”

[Emphasis Supplied]

1.8.3] The Hon’ble ITAT Chandigarh Bench ‘B’ in the case of HFCL Infotel Limited v. ITO as reported in [2006] 99 TTJ 440 (Chandigarh) has held that:

“9. We have heard both the parties and have gone through the orders of lower authorities and the decisions referred by the parties. We are of the opinion that the interconnect charges paid by the assessee to BSNL cannot be treated as technical services as provided under s. 194J. The assessee-company is paying interconnect charges for using the network of BSNL. No doubt that the highly technical and sophisticated equipments and infrastructure is used by the telephone operators but that itself does not mean that the charges paid for routing the telephone calls through the said network means that the technical service is being provided.”

[Emphasis Supplied]

1.8.4] In view of the findings reiterated in the judicial precedents cited supra, it is quite evident that even in the facts of the present case, the fact that highly technical and sophisticated equipment and infrastructure were being used by M/s Hoswin Incinerator Private Limited for disposal of waste shall have no significance in determining whether technical services were being rendered to the appellant or not. It is well established that if facility is provided by use of machine/robot or where sophisticated equipments are installed and operated with a view to earn income by allowing the customers to avail of the benefit by user of such equipment, the same does not result in the provision of technical service to the customer for a fee until and unless the customer acquires certain skill/knowledge/ intellect which can be further used by him for its own purpose/research. Hence, the payment made by the appellant for availing the facility of waste collection and disposal provided by M/s Hoswin Incinerator Private Limited cannot be termed as "Fees for Technical Services".

1.9.1] It has been further held by several benches of Tribunal across the country that collection, transportation and disposal of waste would be liable for deduction of tax under section 194C of the Income-Tax Act, 1961 and not under section 194J of the Income-Tax Act, 1961.

Relevant extracts from few of the these judicial precedents which have enunciated the above-mentioned principles are reproduced hereunder for your ready reference:

1.9.2] The Hon'ble ITAT Ahmedabad Bench 'A' in the case of ITO (TDS), Baroda Vs Gujarat Fluorochemicals Limited [ITA Nos. 1983, 1984, 1985/Ahd/2012] has categorically laid down that collection, transportation and disposal of waste would be liable for deduction of tax under section 194C of the Act and not under section 194J of the Act. Relevant extract from the said judgment is reproduced hereunder for your ready reference:

[Page No. 52-61]

"8. These grounds of the Revenue pertained to non deduction of tax at source on payments made to M/s. Nandesari Environment Control Ltd. and Gujarat Enviro Protection & Infrastructure Ltd. as per [Section 194J](#) of IT Act. An arrangement was made with those parties to lift the material and dispose of the waste. The assessee company was making the payments for treatment of an affluent up to the plants. According to AO such services of carrying on the waste to the affluent plant was a 'technical service'. According to AO, payment made for the disposal of the

waste was a 'professional service'; therefore, the provision of [Section 194J](#) was applied.

9. When the matter was carried before learned CIT (A), it was held that instead of provision of [Section 194J](#) only the provision of [Section 194C](#) would be applicable. Relevant paragraph of learned CIT (A) is reproduced below:

"The reasons of the ACIT(TDS) Circle, Baroda for arriving at the conclusion that the provisions of [Section 194J](#) of the I.T. Act are applicable in I respect of payments made by the appellant company to the Nandesari Environment Control Ltd. and M/s Gujarat Enviro Protection & Infrastructure ltd. as well as above entire submission of the appellant have been considered. In my opinion the ITO(TDS) Circle, Baroda is not correct in holding the view that services rendered for handling and disposal of Hazardous Chemical Waste Management are services of technical nature. The scope of work of Nandesari Environment Control Ltd. and M/s Gujarat Enviro Protection & Infrastructure ltd. was for collection, transportation and disposal of Hazardous Solid Waste from GFL, Dahej site to Gujarat Enviro Protection & Infrastructure ltd., Surat as per GPCB norms. Again the work of Nandesari Environment Control Ltd. was for operation and maintenance charges and was also based on the quantity lifted. The work of these two companies were of collection, transportation and disposable of waste and these two companies were not giving any technical or managerial or consultancy services as envisaged in [Section 194J](#) of the I.T. Act. As per the appellant in its case the waste is also processed in its own FTP Plant at factory location and the above two companies do not have any role in such process. As per the appellant these two companies were carrying out it only for collection, transportation and disposal of waste and, therefore, same are covered under the provision of [Section 194C](#) of the I.T. Act. I agree with this submission of the appellant company and in my opinion collection, transportation and disposal of waste by these two companies cannot be said to be in the nature of technical, managerial or consultancy services as envisaged in [Section 194J](#) of the IT Act. I, therefore, hold that the ACIT(TDS) Circle, Baroda is not correct in holding the view that the services rendered by above two companies are in technical nature. I, therefore, direct the ACIT(TDS) Circle, Baroda to work out the tax at source on the payments made to Nandesari Environment Control Ltd. and M/s Gujarat Enviro Protection & Infrastructure ltd. as per provisions of [Section 194C](#) of the I.T. Act and also to charge the interest in case if required accordingly. Thus the grounds of appeal of the appellant related to the payments made by it to above two companies are decided in its favour."

10. Having heard the submission of both the sides and after considering the totality of the facts and circumstances of the case, we are of the considered opinion that the collection, transportation and disposal of waste by those two companies can be said to be covered under the

provisions of [Section 194C](#) of IT Act. The view taken by learned CIT (A) is, therefore, confirmed. We have been informed that the payee, i.e., the assessee company had already deducted the tax as per the provisions of [Section 194C](#) of IT Act. However, this fact can be verified by the AO. In the result, we find no force in the ground of the Revenue, hence dismissed. Resultantly, all the appeals of the Revenue are dismissed.”

[Emphasis Supplied]

1.9.3] The judgment of the Hon’ble ITAT Ahmedabad Bench ‘A’ in the case of Gujarat Fluorochemicals as cited supra is squarely applicable to the facts of the present case since the appellant also made to M/s Hoswin Incinerator Private Limited for collection, transportation and disposal of waste and therefore TDS was rightly deducted at the rate of 2% under section 194C of the Income-Tax Act, 1961.

1.9.4] The Hon’ble ITAT Mumbai Bench ‘C’ in the case of M/s Coimbatore Integrated Waste Management Company Pvt. Ltd. Vs. DCIT-TDS, Coimbatore [I.T.A. No. 2710/Mum/2015] vide order dated 01-03-2018 has held that: [Page No. 62-67]

“5.....The issue to be decided is as to whether the work carried out by the assessee would fall in the category of technical services as envisaged by the provisions of [section 9](#) of the Act. Technical services mean any consideration paid for the rendering of any managerial, technical or consultancy services. In the case under consideration no consultancy was provided by the sub contractor. Similarly it had not rendered any managerial services. The assessee had entered in to an agreement with the sub contractor and the sub contractor was carrying out certain jobs as required by CMC. But, it had not transferred any technical knowledge to the assessee. Thus, the first pre-condition of services being of Technical nature is not fulfilled.....

We find that there was no direct and Livelink between the payment and receipt/use of technical services/information. In our opinion the AR head rightly argued that technical services would not include services provided by the machines. In the case of Parsurampur Synthetic Ltd.(supra), the tribunal has held that there might be use of services of technically qualified person to render the services, that same would not bring the amount paid as fee for technical services within the meaning of explanation 2 to [section 9 \(1\) \(vii\)](#) of the Act. Accordingly, we hold that payment made by the assessee to UEEL for exhibiting the work contract would fall within the provisions of [section 194C](#) of the Act and not under the [section 194 J](#). Effective ground of appeal is decided in favour of the assessee.”

[Emphasis Supplied]

1.9.5] The Hon'ble ITAT Mumbai Bench 'D' in the case of M/s Ruby Macons Ltd vs DCIT, Mumbai [ITA No. 4056/Mum/2008] has categorically held that: [Page No. 68-76]

"11. We have carefully considered the rival submissions and perused the record. We have also carefully perused the case law relied upon by the learned Counsel, appearing on behalf of the assessee. In the case of CIT vs Bharti Cellular Ltd. (2009) 319 ITR 139 (Del) the Hon'ble Delhi High Court observed that the expression 'technical services' has to be understood in the sense in which it was used in Explanation 2 to section 9 (1) (vii) of the Act and, by applying the rule of noscitur a sociis, the word 'Technical' would take colour from the adjunct words i.e., "managerial" and "consultancy", between which it is sandwiched. Since the words "managerial" and "consultancy" involve a human element, even the expression 'technical service' has to be understood as a service which predominantly involves human element. In the said case Bharati Cellular Ltd. provides interconnection between one net work to the other, which are known as ports and payments made by the assessee for such interconnections were held to be not involving any services rendered by a human and thus it cannot be considered as a "technical services" as contemplated under section 194J of the Act.

12. In the case of Skycell Communications Ltd. vs. DCIT (supra) the Hon'ble Madras High Court analysed the provisions of the Act to hold that mere collection of a fee for use of a standard facility provided to all those willing to pay for it does not amount to fee for technical services. VSAT Charges, leased line charges, BOLT charges, Demat charges etc., paid to stock exchange were also held to be not predominantly requiring human services but only fees collected for use of a standard facility.

13. In the case of Jaipur Vidyut Vitran Nigam Ltd. vs. DCIT (supra) the question for consideration was as to whether payments for transmission, wheeling and SLDC charges to electricity transmission company would fall within the meaning of the expression "technical services". The Bench observed that as per the agreement there was open access to all users with regard to transmission lines. Merely because operation and maintenance of transmission lines and maintaining its grid station was with the help of certain work force, it cannot be considered that they were rendering any technical services to the assessee since they can be said to be simply discharging their function of operating and maintaining its grid station and transmission lines. Analysing section 194J of the Act, the Bench further noticed that only when the technology or technical knowledge of a person is made available to others it can fall within the expression 'technical service' and mere permission to use technology would not attract provisions of section 194J of the Act.

14. We may turn to the facts of the case on hand so as to appreciate as to whether the services rendered by VWEMCL involves human interface or was it merely a standard facility provided to all the members who were jointly involved in setting up affluent treatment plant. It is not in dispute that the rate is fixed depending on the actual water consumed by member unit and also based on discharge quality norms. It is also not in dispute that amount collected is on no profit no loss basis and if any excess amount is collected it is passed on to members by way of discount. This was accepted by the Assessing Officer while making an assessment under section 143 (3) of the Act in the case of VWEMCL. Such being the case it has to be considered as a standard facility available to each member/industrial undertaking ; VWEMCL is running a treatment plant providing a standard facility and if any work force is involved in maintaining the standard facility it cannot be said that a special skill/knowledge was passed on by individuals to the assessee in lieu of a specific fee collected. Such being the case, we are of the considered opinion that it cannot be considered as a payment in the form of “fee for technical services”. In the case of recipient company the Assessing Officer accepted that charges were recovered from the member units by adopting mutuality concept.”

[Emphasis Supplied]

1.10] In view of the above discussion and findings reiterated in the judicial precedents cited supra, it clearly transpires that payment made for collection, transportation and disposal of waste would be liable for deduction of tax at the rate of 2% under section 194C of the Income-Tax Act, 1961 and not at the rate of 10% under section 194J of the Income-Tax Act, 1961. In the facts of the present case, the appellant rightly deducted TDS at the rate of 2% under section 194C of the Income-Tax Act, 1961 on the payments made to M/s Hoswin Incinerator Private Limited for collection and disposal of waste. Hence, borrowing the ratio laid down by the judicial precedents cited supra, it is humbly submitted that demand as created on account of short-deduction of tax of Rs. 6,948/- and interest on such short-deduction of tax of Rs. 2,073/- was neither legal nor proper and requires to be deleted in entirety.

7. On the other hand, Ld. Departmental Representative (DR) opposed these submissions and supported the order of the authorities below.

8. Ld. counsel for the assessee submitted that the case of the

assessee is squarely covered by the decision of the Coordinate Bench of this Tribunal rendered in the case of *ITO vs. Gujarat Fluoro chemicals Limited* (ITANo.1983,1984,1985/Ahd/2012) dated 31.10.2013. Ld. counsel also placed reliance the judgment of Hon'ble Supreme Court rendered in the case of *CIT vs. Kotak Security Ltd.* 340 ITR 333(SC). Further reliance was placed on the decision of the Delhi Bench of this Tribunal rendered in the case of *ITO, Rohtak vs. Akon Electronics India (P.) Ltd.* (2018) 97 Taxmann.com 176(Delhi-Trib.)

9. We have heard rival submissions and perused the material available on record. The Ld. CIT(A) dismissed the appeal by observing as under:

“Ground No.1 & 3: Both the grounds of appeal have been raised against raising the tax liability of Rs.6,948/- on account of short deduction of taxes u/s 201(1) of the Income Tax Act,1961. The AO has discussed the issue at para nos.3 to 3.6 of the assessment order. It has been observed by the AO that the appellant had entered into a contract with M/s Hoswin Incinerator Pvt. Ltd. for rendering technical services which should have been considered as technical consultancy on which section 194J of the Income Tax Act,1961 should have applied. The appellant, by virtue of above section was liable to deduct the taxes @ 10% whereas the same has been deducted @ 2% in accordance with section 194C of the Income Tax Act,1961. Further, the AO at para no.3.3 and 3.4 has given the detailed finding to prove that the service rendered by M/s Hoswin incinerator Pvt. Ltd. was within the purview of technical services. The appellant during the course of appeal proceedings has filed the written submission which is reproduced above. It is evident from the written submissions that the appellant has failed to controvert the findings of AO given at para nos.3.3 & 3.4 of the assessment order. Therefore, the AO has been found

justified in assessing the short deduction of Rs.6,948/-. The same is hereby confirmed. Both the grounds of appeal are dismissed.

4. Ground No.3: This ground of appeal has been raised against the addition of Rs.2,073/- on account of charging interest u/s 201(1A) of the Income Tax Act 1961. The AO has discussed the issue at para no.4 of the assessment order. The short deduction of taxes as worked out by the AO has been confirmed while adjudicating the grounds nos.1 & 2. Therefore, the interest, being mandatory on the short deduction, the appellant is liable to pay. Therefore, the action of the AO in charging the interest of Rs.2,073/- is hereby confirmed. This ground of appeal is dismissed.

10. It is noteworthy that the deductee company has rendered services of lifting material and disposal of hospital waste from the premises of the assessee. Now question is whether lifting material and disposal of hospital waste would fall within the definition of technical services. The Coordinate Bench of this Tribunal in the case of *ITO vs. Gujarat Fluorochemicals Limited* (supra) has held as under:

“8. These grounds of the Revenue pertained to non deduction of tax at source on payments made to M/s. Nandesari Environment Control Ltd. and Gujarat Enviro Protection & Infrastructure Ltd. as per [Section 194J](#) of IT Act. An arrangement was made with those parties to lift the material and dispose of the waste. The assessee company was making the payments for treatment of an affluent up to the plants. According to AO such services of carrying on the waste to the affluent plant was a 'technical service'. According to AO,

payment made for the disposal of the waste was a 'professional service'; therefore, the provision of [Section 194J](#) was applied.

9. When the matter was carried before learned CIT(A), it was held that instead of provision of [Section 194J](#) only the provision of [Section 194C](#) would be applicable. Relevant paragraph of learned CIT(A) is reproduced below:

"The reasons of the ACIT(TDS) Circle, Baroda for arriving at the conclusion that the provisions of [Section 194J](#) of the I.T. Act are applicable in I respect of payments made by the appellant company to the Nandesari Environment Control Ltd. and M/s Gujarat Enviro Protection & Infrastructure ltd. as well as above entire submission of the appellant have been considered. In my opinion the ITO(TDS) Circle, Baroda is not correct in holding the view that services rendered for handling and disposal of Hazardous Chemical Waste Management are services of technical nature. The scope of work of Nandesari Environment Control Ltd. and M/s Gujarat Enviro Protection & Infrastructure ltd. was for collection, transportation and disposal of Hazardous Solid Waste from GFL, Dahej site to Gujarat Enviro Protection & Infrastructure ltd., Surat as per GPCB norms. Again the work of Nandesari Environment Control Ltd. was for operation and maintenance charges and was also based on the quantity lifted. The work of these two companies were of collection, transportation and disposable of waste and these two companies were ITA No.1956, 1957, 1958, 1983, 1984, 1985/Ahd/2012 Gujarat Flurochemicals Ltd. Baroda.

For A.Ys. 2008-09, 2009-10, 2010-11 not giving any technical or managerial or consultancy services as envisaged in [Section 194J](#) of the I.T. Act. As per the appellant in its case the waste is also processed in its own FTP Plant at factory location and the above two companies do not have any role in such process. As per the appellant these two companies were carrying out it only for collection, transportation and disposal of waste and, therefore, same are covered under the provision of [Section 194C](#) of the I.T. Act. I agree with this submission of the appellant company and in my opinion collection, transportation

and disposal of waste by these two companies cannot be said to be in the nature of technical, managerial or consultancy services as envisaged in [Section 194J](#) of the IT Act. I, therefore, hold that the ACIT(TDS) Circle, Baroda is not correct in holding the view that the services rendered by above two companies are in technical nature. I, therefore, direct the ACIT(TDS) Circle, Baroda to work out the tax at source on the payments made to Nandesari Environment Control Ltd. and M/s Gujarat Enviro Protection & Infrastructure ltd. as per provisions of Section 194C of the I.T. Act and also to charge the interest in case if required accordingly. Thus the grounds of appeal of the appellant related to the payments made by it to above two companies are decided in its favour."

10. Having heard the submission of both the sides and after considering the totality of the facts and circumstances of the case, we are of the considered opinion that the collection, transportation and disposal of waste by those two companies can be said to be covered under the provisions of [Section 194C](#) of IT Act. The view taken by learned CIT(A) is, therefore, confirmed. We have been informed that the payee, i.e., the assessee company had already deducted the tax as per the provisions of [Section 194C](#) of IT Act. However, this fact can be verified by the AO. In the result, we find no force in the ground of the Revenue, hence dismissed. Resultantly, all the appeals of the Revenue are dismissed.

11. The facts are identical as were in the case of ITO vs. Gujarat Fluoro chemicals Limited (supra). We, therefore, respectfully following the decision of the Coordinate Bench of this Tribunal hold that the services provided by the deductor would not fall in the category of technical services, therefore, the assessee has rightly deducted tax u/s 194C of the Act. Now coming to Ground Nos.2 & 3

of this appeal as we have decided the issue of deduction of tax u/s 194C of the Act in favour of the assessee, therefore, ground No.2 & 3 of the assessee are allowed. The AO is hereby directed to delete the impugned additions.

12. In result, appeal filed by the assessee is allowed.

Order was pronounced in the open court on 31.08.2020.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 31/08/2020

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore