

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI “B” BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 2881/Mum/2025
Assessment Year : 2022-23

M/s. Bombay Integrated Security (India) Limited, 101, Omega House, Hiranandani Gardens, Powai, Mumbai-400076. PAN : AABCB5803G	vs.	The Income Tax Officer, TDS OSD, TDS Circle-1(1), Room No. 411, 4 th Floor, Cumballa Hills, MTNL TE Building, Pedder Road, Dr.Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400026.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Joshi
For Revenue :	Shri Leyaqat Ali Aafaqui

Date of Hearing :	16-06-2025
Date of Pronouncement :	19-06-2025

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Addl/JCIT(A)-Mysore [‘Ld.CIT(A)’], dated 07-03-2025, pertaining to Assessment Year (AY) 2022-23, wherein the assessee has taken the following grounds of appeal:

“On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing an order u/s.201 of the Income Tax Act 1961 by raising a demand of Rs.4,08,000/-on account of alleged non deduction of TDS u/s. 194J of

the Income Tax Act, 1961 on the payment made of Rs.40,80,000/-, without considering the facts and circumstances of the case.

On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in levying an interest of Rs.2,20,320/- u/s.201(1A) of the Income Tax Act, 1961 on the alleged non-payment of TDS of Rs.4,08,000/- without considering the facts and circumstances of the case.”

2. Briefly the facts of the case are that the assessee is engaged in providing security services and allied services. Basis TDS default reported in para 21(b)(ii) of the Tax Audit Report for the FY. 2021-22, a show cause notice was issued to the assessee as to why the assessee should not be treated as assessee-in-default for non-deduction of TDS on account of payment of Rs. 40,80,000/-, which was paid on 12-12-2021. However, there was no response from the assessee. Thereafter basis material available on record, the AO worked out the TDS liability u/s. 201(1) of the Income Tax Act, 1961 ('the Act') amounting to Rs. 4,08,000/- which was determined at 10% of Rs. 40,80,000/- and the nature of payment subject to TDS u/s. 194J of the Act. Consequentially, interest u/s. 201(1A) of the Act also determined at Rs. 2,20,320/- and thereby raising a demand of Rs. 6,28,320/- and order u/s. 201(1) r.w.s. 201(1A) of the Act was passed on 30-12-2024.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A). It was submitted that during the year under consideration, the assessee had availed services from Velocity Charter Private Limited, which provides an exclusive aircraft charter services and the assessee's personnel has travelled through the charter plane of the Velocity Charter Private Limited and has paid a sum of Rs. 40,80,000/-, without deducting of any tax at source. Regarding the applicability of provisions of section 194J of the Act, it was submitted that hiring of charter plane cannot be treated as

a payment made for professional or technical services and reference was drawn to the Explanation (b) to Section 194J r.w. Explanation 2 to Clause (vii) of Sub-section (1) of Section 9. Further reliance was placed on the decision of the Hon'ble Madras High Court in the case of Skycell Communications Ltd. vs. DCIT, [2001] 251 ITR 53 (Madras) and it was submitted that where a person travels in an aeroplane, it cannot be said that the airlines is rendering a technical service to the passenger and, therefore, the passenger is not under any obligation to deduct tax at source on the payments made to the airline for having used it for travelling from one destination to another.

4. The submissions so filed by the assessee were considered, but not found acceptable to the Ld.CIT(A). As per the Ld.CIT(A), the assessee has not furnished any clinching evidence in support of the claim in the grounds of appeal and the onus lies on the appellant to substantiate its claim with supporting evidence. Accordingly, the action of the AO in terms of raising demand u/s. 201(1) r.w.s. 201(1A) of the Act was upheld. Against the said findings, the assessee is in appeal before us.

5. During the course of hearing, Ld. AR reiterated the submissions made before the Ld. CIT(A) and it was submitted that the assessee has not availed any technical services which is liable for TDS u/s 194J; whereby it has availed the services of Velocity Charter Private Limited from the whom the assessee has hired plane to fly to Gorakhpur and in support, a copy of the tax invoice was placed on record. Further reliance was placed on the decision in the case of Kotak Securities Ltd., wherein it was held that the transaction charges paid to Bombay Stock Exchange by its Members were not in the nature of technical services and which were in the nature of facilities provided by Stock Exchange and no TDS on such payment is

deductible u/s. 194J of the Act. It was further submitted that the assessee has reached out to Velocity Charter Private Limited to confirm as to whether they have offered the amount to tax while filing its return of income. However, the assessee has not being able to obtain the necessary confirmation in this regard.

6. Per contra, the Ld. DR is heard, who has relied on the order passed by the Ld.CIT(A). Further, regarding the copy of the invoice submitted by the Ld.AR, it was submitted that it is unclear whether the said invoice was placed before the lower authorities or before the Ld.CIT(A) and in any case on perusal of the said invoice, it is apparent that the assessee has incurred charter hire charges for the flight which were undertaken on 30-12-2021 and thereafter again on 03-01-2022 and the charges not just include flying charges, but also ground handling charges, which are clearly technical in nature. It was further submitted that it is also evident from the invoice that the Velocity Charter Private Limited has also charged CGST and SGST as well as IGST which also prove that the services are in the nature of technical services. It was accordingly submitted that there is no infirmity in the order so passed by the AO and which has been confirmed by the Ld.CIT(A). Therefore, the appeal so filed by the assessee be dismissed.

7. We have heard the rival contentions and perused the material available on record. We find that though the AO has referred to the TDS default in terms of non-deduction of TDS u/s. 194J of the Act for an amount of Rs. 40,80,000/- paid by the assessee on 12-12-2021, other than the default reported in the Tax Audit Report, there is no material in the possession of the AO and on record as to how the said default has been determined. The tax audit report is also silent as to how the provisions of Section 194J have been held applicable and the basis of

arriving at the said opinion by the tax auditor. If we refer to the provisions of Section 194J of the Act, it provides that any person other than an individual or an HUF, who is responsible for paying to a resident any sum by way of fee for professional services or fee for technical services or royalty etc., 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, shall deduct at appropriate rate as specified. Therefore, it is critical to determine the nature of transaction as to whether the same will constitute as fee for technical services, professional services or in the nature of a royalty and thereafter, basis such determination, the TDS liability can be quantified. However, we find that in the instant case, there is no such finding recorded by the AO apparently for the reason that the assessee has not complied to the show cause notice issued by the AO. Even there is nothing on record as to how the tax auditor has determined the TDS liability u/s. 194J of the Act. Even before the Ld.CIT(A), we find that even though the assessee has stated that it has availed charter hire services from Velocity Charter Private Limited, there is no supporting documentation in terms of any charter hire agreement or copy of the invoice which seems to be submitted for the first time before us. Basis the invoice, it is difficult to determine the precise nature of the transaction and consequent TDS liability. Further, there are separate provisions in terms of 194C in terms of transportation services and there is no finding recorded by either of the authorities in this regard as to how the said provisions are not applicable. The tax audit report is a good starting point for identifying the default but where the assessee is contesting the same, the onus lies on the assessee to demonstrate with suitable documentation as to how the TDS provisions so sought to be invoked are not applicable and basis the same, the AO has to record specific finding before the

liability is fastened on the assessee. In the instant case, we find that other than the tax audit report, there is nothing on record and no substantive explanation furnished by the assessee. Therefore, we deem it appropriate to remit the matter back to the file of the AO to determine the exact nature of a transaction, after providing reasonable opportunity to the assessee. Since we are setting aside the matter to the file of the AO, it would also be appropriate to determine whether the payee has included the said transaction while offering its income in the return of income and have paid the appropriate tax or not and in this regard, the AO may seek necessary information from the payee concerned.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19-06-2025

Sd/-
[MS. KAVITHA RAJAGOPAL]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 19-06-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai