



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1838 OF 2018**

Commissioner of Income-Tax (TDS)-2	...Appellant
<u>Versus</u>	
Vodafone Essar Ltd.	...Respondent

Mr. Y. S. Bhate for the Appellant.
Mr. Jitendra Singh a/w Ms. Shivali Mhatre for the Respondent.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 26 February 2025

PC.:-

1. Heard learned counsel for the parties.
2. This appeal concerns the assessment year 2008-2009.
3. Mr. Bhate, learned counsel for the Appellant-Revenue, proposes the following substantial question of law which, according to him, arises in this appeal:-

“Whether in the facts and in the circumstances of the case and in law, the, Hon’ble ITAT was justified in not upholding the order of the A.O. that tax was deducted at source by the assessee from the above payments under section 194J of the Act wherein services received by the assessee is technical and professional in nature.

4. Mr. Bhate submits that the agreement entered by the assessee with IGSPT and the other material on record clearly showed that the agreement concerned the assessee's availing of professional / managerial / technical expertise services. Accordingly, he submitted that the tax should have been deducted at source under Section 194J, not Section 194C of the Income Tax Act, 1961. He submitted that the finding and conclusion of the Tribunal to the contrary suffered from

perversity and, therefore, this appeal should be admitted on the substantial question of law as proposed.

5. Mr. Singh, learned counsel for the Respondent, submitted that there are concurrent findings of fact that the payments made under the agreement with IGSPT did not involve any provision for professional / managerial / technical expertise services to the assessee. He submitted that there are concurrent findings of fact on this issue and such findings are based on the agreement and other material on record. He, therefore, submitted that no question of law, much less any substantial question of law, arises in this appeal.

6. The rival contentions now fall for our determination.

7. In this case, the CIT(Appeals) and ITAT have recorded concurrent findings that the agreement entered into by the assessee with the IGSPT did not involve providing any professional / managerial / technical expertise services to the assessee. The two authorities have recorded concurrent findings of fact that the agreement concerned providing a call centre. The service executives were generally undergraduates or graduates of any stream who would act in a particular manner consistent with the prescribed guidelines when attending to the subscribers' complaints.

8. The above findings of fact are supported by the terms of the agreement between the assessee and IGSPT and the other material on record, such as the details of the call service executives, their qualifications, and the nature of work they discharged. Therefore, the concurrent findings of fact cannot be said to suffer from perversity either because they are based on no evidence or because they are contrary to the weight of the evidence on record.

9. The CIT(Appeals) and ITAT have dealt with the above factual issue in detail. They have also considered the law on the subject and correctly focused on the factual aspects and recorded findings of fact, which cannot be said to be perverse.

10. Since the question now proposed by Mr. Bhate entirely depends on factual findings and further, since we are satisfied that the factual findings concurrently recorded by the two authorities suffer from no perversity, no question of law could be said to arise in this appeal.

11. Further, the ITAT has recorded that the service providers to whom the assessee made the payments have already paid the appropriate taxes by way of advance tax / self-assessment tax. Thus, the ITAT has held that the law laid down by the Hon'ble Supreme Court in the case of *Hindustan Coca-Cola Beverage (P.) Ltd. vs. Commissioner of Income-tax*¹ has also been substantially complied with by the assessee.

12. Accordingly, we are satisfied that this case does not involve any question of law. Since the involvement of a substantial question of law is an essential pre-requisite, which is absent in the present case, we dismiss this appeal without any costs order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)

¹ (2007) 163 Taxman 355 (SC)