



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA. No.1546/2006**

% **Date of Decision: November 17, 2006**

Commissioner of Income-tax, Delhi-XVII APPELLANT
!
Through Mr. R.D. Jolly with
Ms. Sonia Mathur, Advocates

versus

\$ **Prasar Bharti (Broadcasting Corprn. of India) RESPONDENT**
^
Through None

ITA. No.1555/2006

Commissioner of Income-tax, Delhi-XVII APPELLANT
!
Through Mr. R.D. Jolly with
Ms. Sonia Mathur, Advocates

versus

\$ **Prasar Bharti (Broadcasting Corprn. of India) RESPONDENT**
^
Through None

ITA. No.1556/2006

Commissioner of Income-tax, Delhi-XVII APPELLANT
!
Through Mr. R.D. Jolly with
Ms. Sonia Mathur, Advocates

versus

\$ **Prasar Bharti (Broadcasting Corprn. of India) RESPONDENT**
^
Through None

ITA. No.1557/2006



Ms. Sonia Mathur, Advocates

versus

\$ Prasar Bharti (Broadcasting Corprn. of India) RESPONDENT
^ Through None

ITA. No.1558/2006

Commissioner of Income-tax, Delhi-XVII APPELLANT
! Through Mr. R.D. Jolly with
Ms. Sonia Mathur, Advocates

versus

\$ Prasar Bharti (Broadcasting Corprn. of India) RESPONDENT
^ Through None

and

ITA. No. 1569/2006

Commissioner of Income-tax, Delhi-XVII APPELLANT
! Through Mr. R.D. Jolly with
Ms. Sonia Mathur, Advocates

versus

\$ Prasar Bharti (Broadcasting Corprn. of India) RESPONDENT
^ Through None

CORAM :-

* **HON'BLE MR. JUSTICE VIKRAMAJIT SEN**
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the order? ✓
2. To be referred to the Reporter or not? ✓
3. Whether the order should be reported in Digest? ✓

ORDER



260A of the Income Tax Act, 1961 ('Act') are directed against the com
order dated 21.4.2006 passed by the Income Tax Appellate Tribunal
(ITAT) Delhi Bench allowing the appeals (ITA Nos. 3786 to
3791/Del/2005) filed by the respondent, Prasar Bharti (Broadcasting
Corporation of India). While the impugned order dated 21.4.2006 also
allowed another appeal of the respondent being TDS No.166/Del/2003 (for
the Assessment Years 1995-96 to 2001-02), no appeal appears to have been
filed in respect of the said matter.

2. At the outset we notice that in the memorandum of appeal it is stated
that the respondent "is a government body which controls and manages
various Doordarshan Channels." The appellant is, therefore, required to
obtain permission from the Committee on Disputes (COD) to litigate, in
terms of the judgment of the Hon'ble Supreme Court in *Oil & Natural Gas
Commission v. Collection of Central Excise* [(1994) 116 CTR (SC) 643].
The memorandum of appeal does not state whether such permission has
been applied for and obtained. Mr. Jolly, learned counsel for the appellant,
submits that he will have to seek instructions in this regard. However, since
we are not inclined to entertain these appeals, we do not think it necessary
to grant an adjournment for this purpose.



3. The Respondent assessee was making certain payments to ou
producers for programmes under 'commissioned category' for which the
assessee had been deducting tax at source under Section 194C, by treating
them as contract payments. The stand of the Revenue was that television
programme producers should be treated as professional/technical persons
and that payments made to them should be subjected to deduction of tax at
source under Section 194J of the Act. The rate of deduction of tax at source
under Section 194C is 2 per cent under, whereas under Section 194J it is 5
per cent. An order was made by the Assistant Commissioner of Income
Tax(ACIT) on 29.11.2002 under Section 201/201(1A) of the Act holding
that the assessee is liable to be treated as an assessee in default and that the
short deduction including interest for the relevant financial years worked
out to Rs.6.40 crores. The assessee's appeal was dismissed by the
Commissioner of Income Tax(Appeals) [CIT (A)]. The appeals preferred
thereafter by the assessee were allowed by the ITAT by the impugned order.

4. Section 194C(1) requires a person responsible for paying any sum to
any resident "for carrying out any work (including supply of labour for
carrying out any work) in pursuance of a contract between the contractor"
and any corporation established by or under a Central Act (which would



per cent of such payment in case of advertising and two per cent in all cases.

5. By the Finance Act, 1995, with effect from 1.7.1995, Explanation III was inserted in Section 194C which reads as under:

“Explanation III.—For the purposes of this section, the expression “work” shall also include—

(a) advertising;

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(c) carriage of goods and passengers by any mode of transport other than by railways;

(d) catering.”

Therefore, in terms of Clause (b) of Explanation III to Section 194C payment made towards a contract concerning “broadcasting and telecasting include production of programmes for such broadcasting or telecasting” would be covered by Section 194C.

6. Even while Finance Act, 1995 introduced the aforesaid Explanation III to Section 194C, it simultaneously inserted Section 194(J) in the Act



fee "for professional or technical service". The operative portion of Section

194J relevant for the present purpose reads as under:

"Fees for professional or technical services.

194J. (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,

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 five per cent of such sum as income-tax on income comprised therein"

The explanation to Section 194J, relevant for the present purpose, reads as under:

"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"



the present case, the Section 194C or 194J would be attracted. The I has, and in our view correctly, held that once there is a specific provision introduced by way of an Explanation to Section 194(C), to bring within its ambit the contractual work concerning "broadcasting and telecasting", the Revenue cannot resort to Section 194J which is in more general terms.

8. Mr. R.D. Jolly, the learned counsel for the appellant submits that the making of the programmes for television involves the utilisation of professional services and that there are several technical aspects of producing such programmes which will attract the explanation (a) to Section 194J. He, therefore, submits that the view expressed by the ACIT and CIT (A) should be accepted and that of the ITAT, which holds to the contrary rejected.

9. We are unable to agree with this submission. We observe that Explanation III, which was introduced simultaneously with Section 194J, is very specific in its application to not only broadcasting and telecasting but also include 'production of programmes for such broadcasting and telecasting'. If, on the same date, two provisions are introduced in the Act, one specific to the activity sought to be taxed and the other in more general



intention of the Legislature. It is not, therefore, possible to accept
contention of the Revenue that programmes produced for television,
including 'commissioned programmes', will fall outside the realm of
Section 194C Explanation III of the Act. We find no infirmity in the view
taken by the ITAT which we hereby affirm.

10. In this view of the matter we hold that these appeals do not involve
any substantial question of law. The appeals are accordingly dismissed with
no order as to costs.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

Vikramajit Sen, J.

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. Muralidhar, J.

November 17, 2006

ak