

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.4403/M/2012  
Assessment Year: 2009-10**

|   |     |   |
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| The Asstt. Commissioner of<br>Income Tax-8(3),<br>Room No.217,<br>Aayakar Bhavan,<br>M.K. Marg,<br>Mumbai – 400 020 | Vs. | M/s. United Healthcare India<br>Pvt. Ltd.,<br>3A, Gundecha Enclave,<br>Kherani Road,<br>Saki Naka, Andheri (E),<br>Mumbai - 72<br><b>PAN: AAACS 9480R</b> |
| (Appellant)   |     | (Respondent)  |

**ITA No.2940/M/2014  
Assessment Year: 2010-11**

|  |     |   |
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| The Asstt. Commissioner of<br>Income Tax (TDS)-3(1),<br>R.No.1012, 10 <sup>th</sup> Floor,<br>Smt. K.G. Mittal Ayurvedic<br>Hospital Building,<br>Charni Road,<br>Mumbai – 400 002 | Vs. | M/s. United Healthcare India<br>Pvt. Ltd.,<br>3B, Gundecha Enclave,<br>Kherani Road,<br>Saki Naka, Andheri (E),<br>Mumbai - 72<br><b>PAN: AAACS 9480R</b> |
| (Appellant)  |     | (Respondent)  |

**Present for:**

Assessee by : Shri Ashish Sodhani, A.R.  
Revenue by : Shri G.M. Doss, D.R.

Date of Hearing : 07.01.2016  
Date of Pronouncement : 08.01.2016

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The above captioned two appeals by the Revenue relating to A.Y. 2009-10 & 2010-11 have been preferred against the separate orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 23.12.2012 & 10.02.2014 respectively. Since the appeals are relating to the same assessee, hence the same were heard together and are being disposed of with this common order. First we take up ITA No.4403/M/2012 for A.Y. 2009-10.

**ITA No.4403/M/2012 for A.Y. 2009-10**

2. The sole issue raised in this appeal is in relation to disallowance of expenditure made by the Assessing Officer (hereinafter referred to as the AO) under section 40(a)(ia) of the Income Tax Act with regard to payment made to hospitals by the assessee on behalf of insurance companies without deducting the TDS.

3. The assessee is a third party administrator whose function is that when the insured persons directly avail services of Hospital which is generally known as "cashless services", the TPA takes guarantee of making payment to such Hospitals. The assessee herein collects the amount of medical expenses billed by the hospitals on insured persons, from the Insurance companies and remit the same to the hospitals. Thus, the case of the assessee is that it only provides services of paper work and guarantee and finally makes payments to hospitals in which the insured persons has availed the medical facilities/services. The assessee is doing all these works on behalf of Insurance companies. The assessee neither credits the receipts nor debits the payments to the P&L Account. The AO held that payment made to the Hospitals by the assessee is covered u/s 1943 and accordingly took the view that the assessee should have TDS from the payments to made to the hospitals. Since the assessee did not deduct tax at source, the AO disallowed such payments by invoking the provisions of sec. 40(a)(ia) of the Act.

4. In appeal, the Ld. CIT(A) deleted the disallowance so made by the AO observing that since the assessee did not claim the amount paid to hospitals as an expenditure at all, therefore no disallowance of expenditure under section 40(a)(ia) is directed.

5. At the outset, the Ld. A.R. of the assessee has stated that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal. He has relied upon the decision of the Tribunal in the case of "ACIT vs. Health India TPA Services Pvt. Ltd." in ITA

No.6475/M/2012 order dated 18.02.2014 and in the case of “Paramount Health Services vs. ITO” in ITA No.2188/M/2013 vide order dated 25.07.2014.

6. We find that the issue came for consideration before the co-ordinate bench of the Tribunal in the case of “Paramount Health Services” (supra) wherein the Tribunal, after considering the relevant submissions and relying upon other decisions of the co-ordinate bench of the Tribunal, has finally concluded as under:

“7. Though the assessee is under the obligation to deduct tax at source under section 194J however, the consequential liability is only under section 201 and 201(1A) and the disallowance under section 40(a)(ia) cannot be automatic when the assessee has not claimed this payment as expenditure against the income. The assessee has shown the income, only the service charges receivable from insurance companies for rendering services as 3rd party administrator and not having any margin or profit element in the payment received from the insurers for the purpose of remitting to the hospitals to settle medical claim of the insured. Therefore, when the said payment has not been claimed as expenditure incurred for earning the income by the assessee then the provisions of section 40(a)(ia) is not attracted for non deduction of tax at source in respect of the said payment. Following the decisions of the Tribunal as relied upon by the assessee and discussion above we hold that no disallowance can be made under section 40(a)(ia) in respect of the payment in question. Accordingly the ground raised in assessee's appeal is allowed and ground raised in the revenue's appeal is dismissed.

8. In the result appeal of the assessee is allowed and that of the revenue is dismissed.”

7. Similar view has been taken by the Tribunal in the case of “Health India TPA Services Pvt. Ltd.” (supra). Respectfully following the above decision of the co-ordinate bench of the Tribunal, this issue is decided in favour of the assessee and it is therefore held that no disallowance under section 40(a)(ia) is warranted in this case, when the assessee has not claimed any expenditure at all.

8. Now coming to the appeal of the Revenue for A.Y. 2010-11 i.e. ITA No.2940/M/2014.

**ITA No.2940/M/2014 for A.Y 2010-11**

9. The Revenue has agitated the action of the Ld. CIT(A) in deleting the penalty levied by the AO under section 271(1)(c) of the Act. At the outset, the Ld. D.R. has submitted that the tax effect/penalty claimed is less than Rs.10 lakhs and the CBDT Circular No. 21/2015 is applicable to this appeal, hence, this appeal be dismissed as not pressed in terms of CBDT circular no 21/2015 dated 10/12/2015.

10. The CBDT vide Circular dated 10/12/2015 (supra) has revised the monetary limits for filing of appeals by the Department before the Tribunal and further vide Para 10 of the said circular it has been clarified that said circular is applicable retrospectively to the pending appeals also. The relevant portion of the circular dated 10/12/2015 (supra) is reproduced below:-

*" 3.Henceforth appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:-*

| <i>Sl. No.</i> | <i>Appeals in Income-tax matters</i> | <i>Monetary Limits (In Rs.)</i> |
|----------------|--------------------------------------|---------------------------------|
| <i>1.</i>      | <i>Before Appellate Tribunal</i>     | <i>10,00,000</i>                |
| <i>2.</i>      | <i>Before High Court</i>             | <i>20,00,000</i>                |
| <i>3.</i>      | <i>Before Supreme Court</i>          | <i>25,00,000</i>                |

*4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.*

*8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*

- (a)Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or*
- (b)Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*

*(c)Where Revenue Audit objection in the case has been accepted by the Department, or*

*(d)Where the addition relates to undisclosed foreign assets/ bank accounts.*

*9. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.*

*10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawal not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.”*

**(underlined for emphasis by us)**

11. The tax effect in dispute in the captioned appeal is stated to be below the monetary limit of Rs.10.00 lacs as specified in the CBDT Circular dated 10/12/2015 (supra). The Ld. DR has not brought out any material to suggest that the captioned appeal is protected by any of the circumstances prescribed in Para-8 of the Circular dated 10/12/2015 (supra). He therefore has stated that in view of the above circular of the CBDT, the captioned appeal be treated as withdrawn/not pressed. Hence, without going into the merit of the issues raised in the present appeal, this appeal is treated as dismissed as withdrawn/not pressed as its filing being in contravention of the CBDT Circular dated 10/12/2015(supra) read with section 268A of the Income Tax Act.

12. In the result, both the appeals of the Revenue are hereby dismissed.

**Order pronounced in the open court on 08.01.2016.**

**Sd/-  
(Ashwani Taneja)  
ACCOUNTANT MEMBER**

**Sd/-  
(Sanjay Garg)  
JUDICIAL MEMBER**

Mumbai, Dated: 08.01.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.