

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. L. P. SAHU, ACCOUNTANT MEMBER
ITA No. 6527/Del/2015
(Assessment Year: 2011-12)**

ACIT (TDS) 5 th Floor, Udyog Vihar, Phase-V, Gurgaon.	Vs. बनाम	Artemis Medicare Service Pvt. Ltd. 414/1, 4 th Floor, DDA Commercial Complex District Center, Janakpuri, New Delhi GIR/PAN: AAFCA0130M
अपीलाथ/(Appellant)		प्रत्यथ/(Respondent)

Department by : Ms. Ekta Jain, Sr. DR
Assessee by : None.

Date of hearing : 18.09.2017
Date of pronouncement : 18.09.2017

ORDER

PER BHAVESH SAINI, J.M :

1. This appeal by the revenue has been directed against the order of Ld. CIT(A)-1, Gurgaon, dated 29.09.2015 for the assessment year 2011-12.
2. Briefly the facts of the case are that assessee company formerly known as Artemis Medicare Services Pvt. Ltd., was incorporated on 18.05.2004. It is registered at Delhi address and is engaged in the business of managing and operating of multi specialty hospital and commenced its commercial operations by setting up the Artemis Health Institute, Gurgaon. The hospital has been utilizing services of number of

Doctors which were categorized as “Employee doctors” and “Medical consultants”. The issue in the present appeal relates to TDS treatment given by the assessee in respect of the following categories of doctors as Consultants and the table below contains details of the payments made during the respective years.

Sl. No.	Classification of Consultants	F.Y. 2009-2010 (Rs.)	F.Y.2010-2011 (Rs.)
1.	Visiting Consultants (Doctors)	24,576.144	21,404,280
2.	Doctors on Revenue Share only	4,221.348	45,736.094
3.	Doctors on Revenue Share with Minimum Guarantee	148,548.444	110,500,340
4.	Senior Doctors on Minimum Guarantee Consultancy Fees	65,062.933	79,428.472
5.	Junior Doctors on Minimum Guarantee Consultancy Fees	52,473,845	72,698,048
	TOTAL	294,882,714	329,767,234

3. The TDS returns for the financial years under consideration as filed in accordance with the provisions of IT Act, 1961, shows that deduction of tax at source has been made u/s 192 of the Income Tax Act in respect of employee doctors while the tax deduction u/s 194J of the Act has been made in respect of five categories of medical consultants as mentioned in the table above.

4. The assessee company has obtained TAN from the TDS jurisdiction at Delhi and had been filing its TDS Returns up to FY 2009-2010 with ACIT, Circle 49(1), New Delhi. Subsequently, on 05.01.2010, the assessee has obtained TAN under the TDS jurisdiction at Gurgaon and has since then has

been filing its returns with ACIT (TDS), Circle, Gurgaon. Consequently for the two financial years, namely 2009-10 and 2010-11 ACIT (TDS) Circle, Gurgaon, passed a consolidated order u/s 201(1) and 201(1A) of Income Tax Act on 10.02.2012 treating the assessee as deemed to be assessee in default wherein raising following demand.

a) FY 2009-2010 ---- Rs. 73,900,116/-

b) FY 2010-2011 ---- Rs. 5,32,54,778/-

Total demand ---- Rs. 12,71,54,894/-

5. The assessee on passing of the order dated 10.02.2012 filed a writ petition before Hon'ble Punjab & Haryana High Court, challenging the jurisdiction of ACIT (TDS) Circle, Gurgaon, in respect of financial year 2009-10 on the ground that the assessee obtained TAN from Gurgaon on 05.01.2010, therefore, for the financial year 2009-10, the jurisdiction was exercisable by erstwhile A.O at Delhi. The matter was decided by Hon'ble High Court vide order dated 16.01.2013 holding that the consolidated order dated 10.02.2012 passed by ACIT, TDS Circle Gurgaon, insofar as it relates to F. Y. 2009-10 is quashed. As a result of the aforesaid order of Hon'ble High Court the assessment order dated 10.02.2012 remains only in respect of financial year 2010-11 (under appeal).

6. Subsequently on 30.03.2012, the ACIT, TDS Circle 49(1), New Delhi passed another order u/s 201/(1) and 201(1A), of the Act for the F. Y. 2009-10. In this order, The AO rejected the contention of the assessee in respect of three categories of doctors i.e. doctors with revenue sharing and minimum

guarantee, senior doctors with minimum guarantee and junior doctors with minimum guarantee. It was held that these categories of doctors were not consultants but were salaried employees of the assessee and the tax should have been deducted u/s 192 of the Act. The A. O at Delhi treated the assessee as assessee in default under section 201(1) and 201(1A) of the Act for failure to deduct TDS under the head salary.

7. The order for financial year 2009-10 passed by Delhi TDS Circle was challenged before the CIT (A) who vide order dated 21.05.2013 modified the order of the A. O. to the extent that doctors with revenue sharing and minimum guarantee and senior doctors with minimum guarantee were held to be consultants whereas junior doctors with minimum guarantee were held as the salaried employees.

8. The order of Ld. CIT(A), New Delhi was challenged before ITAT by the department in ITA no. 4718/Del/2013 and a cross objection was filed by the assessee as CO No. 33/Del/2014. The ITAT, Delhi Bench vide its order dated 15.02.2015 dismissed the appeal of the department and accepted the cross objection of the assessee. The Tribunal for financial year 2009-10 deleted the entire addition and contention of assessee was upheld. In this order, the Tribunal directed all the above five categories of doctors are consultants.

9. Before Ld. CIT(A), the assessee challenged the order of A.O. for financial year 2010-11, whereby a liability of tax

including interest amounting to Rs. 5,32,54,778/- raised u/s 201/201A of the Income Tax Act has been created. The aforesaid demand was raised after treating three categories of medical consultant of the assessee hospital as employees covered u/s 192 of the Income Tax Act.

10. It was submitted before Ld. CIT(A) issue has been decided by the ITAT for financial year 2009-10, in favour of the assessee, therefore, the tax has been deducted under the correct provisions of law. In view of the order of Tribunal, the order of A.O dated 10.02.2012 relates to financial year 2010-11 under appeal is not sustainable.

11. Ld. CIT (A) had gone through the order dated 15.05.2015 for financial year 09-10, found that issue is decided in favour of assessee and accordingly deleted the entire addition. Appeal of assessee was allowed.

12. The revenue in the present appeal challenged the order of Ld. CIT(A) for following the order of ITAT, Delhi Bench preceding F. Y. 2009-10 for deleting demand of Rs. 5, 32,54,778/-.

13. Ld. DR relied upon the order of A. O and submitted that though the issue is covered by the order of ITAT, Delhi Bench, dated 15.05.2015 for preceding Financial Year 2009-10 but the departmental appeal is pending before Hon'ble High Court.

14. The Assessee had been informed the date of hearing through registered post, however, none appeared on behalf of assessee.

15. After considering the submissions of Ld. DR, in the light of findings recorded by CIT(A), we do not find any merit in the departmental appeal. It is admitted fact that identical issue has been decided by ITAT, Delhi Bench for preceding Financial Year 2009-10 vide order dated 15.05.2015 whereby departmental appeal has been dismissed and cross objection of the assessee has been allowed whereby the Tribunal directed that all the above five categories of doctors are consultants. Ld. CIT(A), therefore, correctly followed the order of Tribunal on identical facts for deleting the demand for assessment year under appeal. Merely because the departmental appeal is pending, before High Court, we cannot take contrary decision against the assessee on identical issue, hence, departmental appeal fails and is dismissed.

Departmental appeal dismissed.

Order pronounced in the open court on 18th September, 2017.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER
Date: 18.09.2017
@m!t

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER