

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.6256/Del/2016
Assessment Year : 2015-16**

Fortis Hospitals Ltd., B-22, Sector-62, Noida.	Vs.	ACIT (TDS), Noida.
PAN : AABCF3718N		
(Appellant)		(Respondent)

Assessee by : Shri R. M. Mehta, CA
Department by : Shri Atiq Ahmad, Sr.DR
Date of hearing : 28-12-2017
Date of pronouncement : 28-12-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 19.09.2016 of the CIT(A)-I, Noida relating to assessment year 2015-16.

2. Facts of the case, in brief, are that the assessee company is engaged in the business of providing healthcare services and running a multi-speciality hospital. A survey u/s 133A was conducted in the business premises of the assessee on 18.11.2015. During the said survey, it was found that the assessee has made payments to the tune of Rs.22,03,75,847/- as BT fees towards the service fee of Q-4 of financial year 2013-14 and advance base fee for Q-1 of financial year 2014-15 and examination of these expenses revealed that the

same are in the nature of technical consultancy fee paid to M/s International Hospital Ltd. and are covered u/s 194J of the I.T. Act. However, there was no deduction of tax from the said payments as required u/s 194J. The Assessing Officer, therefore, confronted the same to the assessee. Rejecting the various explanations given by the assessee, the Assessing Officer held the assessee as assessee in default u/s 201(1)/201(1A) and determined the liability at Rs.1,04,57,880/- towards short deduction of tax and interest payable.

3. Before the Id. CIT(A) it was submitted that the payments were made by the assessee to the sister concern and the sister concern has filed its return of income and has paid tax on the professional fee received from the assessee company. It was accordingly argued that the case of the assessee is covered under the proviso to section 201 of the I.T. Act.

3.1 Based on the arguments advanced by the assessee, Id. CIT(A) held that the assessee is entitled to the benefit of proviso to section 201 and accordingly directed the assessee to approach the Assessing Officer for doing the needful.

4. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

- “1. *That the impugned order dated 25.01.2016 passed by the learned Commissioner of Income-tax (Appeals) - I - Noida is bad in law and wrong on facts.*
2. *That on the facts, circumstances and legal position of the case, the learned Commissioner of Income-tax (Appeals) - I - Noida has erred in law in upholding the finding of the AO that no TDS was deducted on an amount of Rs.8,71,49,007/- without examining properly the accounting entries appearing in the ledger account duly placed before him.*

3. *That on the facts, circumstances and legal position of the case, the learned Commissioner of Income-tax' (Appeals) - I - Noida has erred in upholding that the appellant company had not deducted tax from payment made to International Hospital Limited, whereas on facts and circumstances of the case and based on evidence produced before him, it was clear that the appellant company had deducted tax from the alleged amount.*
4. *The appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and/ or any Ground(s) of Appeal at or before the date of hearing."*

5. Ld. counsel for the assessee at the outset filed a copy of the order passed by the Assessing Officer giving effect to the order of the Id. CIT(A) wherein he has deleted the tax portion but has levied interest of Rs.16,55,831/- u/s 201(1A) of the I.T. Act. Referring to page 3 of the Paper Book, he submitted that an amount of Rs.8,80,06,659/- being the payment towards Q-1 of financial year 2014-15 has been paid on 26.05.2014 and TDS of Rs.99,61,851/- had been deducted from the same. Referring to page 4-5 of the Paper Book, he drew the attention of the Bench to the challan evidencing the payment of the same. He submitted that since the payment has already been made before the due date, therefore, the interest levied by the Assessing Officer u/s 201(1A) has to be deleted.

6. Ld. DR on the other hand while supporting the order of the Id. CIT(A) submitted that this matter should be restored to the file of the Assessing Officer for verification.

7. After hearing both the sides, we find out of the total demand of Rs.1,04,57,880/-, the Assessing Officer in the order passed u/s 251 has already

deleted the tax portion amounting to Rs.87,14,900/- levied u/s 201(1). Therefore, what survives is the interest u/s 201(1A) amounting to Rs.16,55,831/-. It is the submission of the ld. counsel for the assessee that the assessee had made payment of Rs.8,80,06,659/- on 26.05.2014 on which TDS of Rs.99,61,851/- is payable and the same has been paid on 06th June, 2014 and has in-fact excess payment of Rs.1,83,333/- has been made and, therefore, there is no question of any liability u/s 201(1A) of the I.T. Act. However, in our opinion, the same needs verification at the level of the Assessing Officer. We therefore deem it proper to restore the issue to the file of the Assessing Officer with the direction to grant an opportunity to the assessee to file necessary details before him. The Assessing Officer shall decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

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

Order pronounced in the open Court at the time hearing itself i.e. on this 28th day of December, 2017.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 28-12-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

//True Copy//

By Order

Assistant Registrar
ITAT, New Delhi