

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.633/Coch/2017 & 18 to 21/Coch/2018
Assessment Years : 2011-12 to 2013-14

The Regional Director/State Medical Commissioner, Employees State Insurance Corporation, Regional Office, Round North, Thrissur. [PAN: AAAJE 0888Q]	Vs.	The Income tax Officer(TDS), Thrissur.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Arun Raj, Adv.
Revenue by	Smt. A.S. Bindhu, DR

Date of hearing	14/05/2019
Date of pronouncement	17/05/2019

ORDER

Per GEORGE GEORGE K. JM:

These appeals at the instance of the assessee are directed against the different orders of the CIT(A), Thrissur. The orders of the CIT(A) are arising out of orders passed u/s. 201(1) and 201(1A) of the I.T. Act.

2. Common issue is raised in these appeals. Hence they were heard together and are being disposed of by this consolidated order.

3. The solitary issue that is raised in these appeals is whether the appellant/assessee is liable for tax deduction at source (TDS) u/s. 194J or 194C of the I.T. Act.

4. The brief facts of the case are as follows:

The assessee who is a Regional Director, Employees State Insurance Corporation (ESIC) had entered into an agreement with various hospitals whereby medical treatment was provided to the persons and their family members who are insured with the assessee. These hospitals provided cashless treatment to these beneficiaries and the assessee in turn made payments to the hospitals. The Assessing Officer noticed that the assessee deducted tax at source on the payments made to the hospitals as per the provisions of section 194C of the I.T. Act at the rate of 2%. The Assessing Officer passed the orders u/s. 201(1) and 201(1A) of the Act making the assessee liable for TDS u/s. 194J of the Act at the rate of 10% for the assessment years 2011-12 to 2013-14.

5. Aggrieved by the orders passed under section 201(1) and 201(1A) of the Act for the assessment years 2011-12 to 2013-14, the assessee preferred the appeals to the first appeal authority. The CIT(A) confirmed the view taken by the Assessing Officer as regards the liability to deduct tax at source as per the provisions of section 194J of the I.T. Act at the rate of 10% and not u/s. 194C of the Act at the rate of 2% as claimed by the assessee. However, the CIT(A)

substantially reduced the liability u/s. 201(1) and 201(1A) of the I.T. Act on the ground that the assessee furnished Form 26A (Rule 31ABC) from various parties who received payments from the assessee. For example, the liability u/s. 201(1) and 201(1A) of the Act for the assessment year 2011-12 was reduced from Rs.2,42,40,041 to Rs.5,41,473/- (based on the remand report furnished by the Assessing Officer).

6. Aggrieved by the orders passed by the CIT(A) for the assessment year 2011-12 to 2013-14, the assessee has filed these appeals before the Tribunal. More or less identical grounds have been raised by the assessee in all these appeals except for variation in figures. Hence the grounds for assessment years 2011-12 in ITA No. 633/Coch/2017 is reproduced below:

1) The order dated 11-9-2017 passed in Appeal No. ITA. 45/TDS/TCR/CIT (A)-111/12-13 by the Commissioner of Income Tax (Appeals), Thrissur to the extent challenged in this appeal and against the appellant is highly illegal, arbitrary, unjustified and contrary to the law and facts of the case.

2) The CIT(A) appeals erred in confirming the finding of the Assessing Officer that the appellant/assessee is liable to deduct tax at source u/s. 194J of the Income Tax Act on the payments made to hospitals for the AY 2011-12.

3) The CIT(A) failed to note that the appellant had entered into service contracts with various hospitals in the State for providing all facilities and services as per the CGHS/ESIC package rates (as specified in clause 1(x)/clause 8 of the agreements) and non-package rates and certain other facilities as specified in the agreement to the employees covered under the ESI Scheme and their family members, employees of ESI Corporation and their family members, pensioners and their dependants and therefore the payments made to the aforesaid hospitals as per the above composite service contracts are not covered u/s. 194J of the Act. The appellant has

rightly deducted tax @ 2% on the payments made to the hospitals pursuant to aforesaid service contracts as per section 194C of the Act.

4). The CIT(A) failed to note that the payment made by the appellant to various hospitals was a composite payment towards the accommodation charges, cost of medicines, and several other charges as specified in clause 1(x)/clause 8 of the agreements and cost of implants, devices, stents etc. and therefore the payments made were towards composite service contract and hence the appellant is liable to deduct tax only as per 194C of the Act as clarified by the Circular No. 715 dated 8-8-1995 issued by the CBDT.

5) The CIT (Appeals) thoroughly failed to understand that the provision of 194J is interalia; applicable only for payment of fees for professional services and not for payments made by the appellant to the hospital towards the hospital bills covering Registration charges, Admission charges, accommodation charges, cost of medicines, implants etc as stated above, which are not fees for professional services.

6) The CIT (Appeals) erred in relying on Question No: 26 of circular No: 715 dated 8-8-1995 and holding that the appellant should have deducted tax at 10% under section 194J of the Income Tax Act on the payments made to the hospitals.

7) The CIT (Appeals) erred in not looking into the nature of the contract executed between the appellant and the hospitals and also erred in not looking into the nature of payments made by the appellant to the said hospitals.

8) The CIT(Appeals) ought to have held that the assessing officer erred in in equating the appellant as the Third Party Administrators (TPA's) and also ought to have held that the case laws referred by the officer is not applicable to the case of the appellant.

9) The CIT (Appeals) erred in holding that the appellant is liable for short deduction of tax under section 201(1) of the Income Tax Act aggregating to Rs 5,41,473/- and also erred in confirming the action of the assessing officer charging tax u/s 201(1) on the above payments. The CIT (Appeals) erred in directing the assessing officer to charge interest u/s 201(1A) of the Act for the above payments.

10) The CIT (Appeals) erred in directing the assessing officer to charge interest u/s 201(1A) of the Act on the payments to persons regarding whom the appellant has submitted form 26A.

11) The CIT (Appeals) failed to consider the issues in the right perspective and also failed to properly understand the factual and legal aspects involved in the appellant's case.

For these and other grounds that may be urged at the time of hearing it is most respectfully prayed that this Honourable Tribunal may be pleased to set aside the impugned order of the CIT (A) to the extent challenged in this appeal and is against the appellant and thereby to set aside the order of the Income Tax Officer(TDS), Thrissur passed under section 201(1)/201 (1A) of the Act for the AY 2011-12 and to allow the appeal.

7. The Ld. AR reiterated the submissions made before the income tax authorities and relied on the grounds raised. The assessee has also filed a P.B. of 29 pages enclosing the written submissions before CIT(A), the sample agreement dated 21/04/2010 entered into between assessee and one of the hospitals etc.

8. The Ld. DR on the other hand supported the orders of the income tax authorities.

9. We have heard the rival submissions and perused the record. Section 194J was inserted by Finance Act, 1995 with effect from 01/07/1995. The said section states that a person not being individual or a HUF who is responsible for making payment to a resident by way of fees for 'professional services' or fees for 'technical services' has to deduct tax at source at the rate of 5%. The term 'professional services' was defined in Explanation (a) to section 194J. The

'professional services' covered by the definition in Explanation (a) is what services are rendered in the course of carrying on legal, medical, accountancy or technical consultancy or interior decoration or advertisement or such other profession as may be notified by the Board under section 44AA of the I.T. Act. The scope and the effect of the new provision was explained by the Board in Circular No. 717 dated 14/08/1995 reported in 215 ITR (St.) 70. The CBDT in its Circular No. 715 dated 08/08/1995 categorically stated that payments made to the hospital for rendering medical services shall attract tax deduction at source u/s. 194J of the I.T. Act. Therefore, it is clear that subsequent to the insertion in section 194J w.e.f. 01/07/1995, payments in connection with medical treatment would attract the provisions of section 194J of the I.T. Act.

9.1 In the instant case, the agreements were executed by the assessee/appellant with the hospitals. The agreements have been executed for medical treatment of the assessee's beneficiaries. The beneficiaries of the assessee were provided cashless medical treatment and assessee would in turn pay the hospitals for such medical treatment. Primarily, the entire payments to the hospitals are for medical treatment. Incidentally, some payments would have expended for hospital room rent, purchase of medicines etc. Since we find that the payments are primarily expended for medical treatment, we hold that such payments would attract provisions of section 194J of the I.T. Act. One has to go by the nature of the receipt in the hands of the payee and certainly in

these cases, payments have been received by the hospitals from the assessee for extending medical treatment to its beneficiaries. Accordingly, we uphold the orders of the Income Tax authorities. In this context, we also rely on the order of the Bangalore Bench of the Tribunal in the case of M/s. Medi Assist India TPA(P) Ltd. vs. Dy. CIT(TDS) (ITA Nos. 503 & 510/B/2011 order dated 22/03/2013).

9.2 Further, sub-section (2) and (3) of section 194J provided for a certificate of nil deduction or deduction at a lower rate on which the deductor could act if issued by the Assessing Officer. These sections have been shifted to section 197 along with similar other provisions so as to simplify the law and bring all cases of tax deduction, where such certification is permissible under a single umbrella in section 197, with effect from 1-6-2003 by way of amendments by the Finance Act, 2003. Therefore if assessee was of the view that there should have been no deduction of tax or short deduction of tax in these cases, it ought to have made an application to the appropriate authority and should have obtained a certificate u/s. 197 of the I.T. Act for no deduction of tax or for short deduction of tax. For this reason also assessee is liable for tax and interest u/s. 201(1) and 201(1A) of the I.T. Act.

9.3 The alternate contention of the assessee is that if the provisions of section 194J of the I.T. Act has to be resorted to with regard to hospital payments, it

should have been restricted to the extent of 'professional fees' contained in the hospital bills. According to the assessee, the Revenue has levied TDS on the composite bill. It was therefore pleaded that suitable directions may be issued to the Assessing Officer to restrict the levy of TDS only to the extent of 'professional fees'. To support the contentions, the Ld. AR placed reliance on the findings of the Hyderabad Bench of the Tribunal in the case of Arogya Sri Health Care Trust vs. ITO reported in (2012) 20 taxman.com 539 (Hyd.)

9.4 We have duly perused the findings of the Tribunal cited supra wherein it has been observed as follows:

"22. As or the quantum of demand raised by the assessing officer under section 201 of the Act, we find some force in the contention of the assessee that it is only the element of fee for professional services comprise in each of the payment made by assessee trust to the hospitals which falls within the scope of s.194J of the Act. As canvassed by the learned counsel for the assessee, elements of payment towards bed charges, medicines, follow up services, out-patient services, transportation charges, implants, expenditure incurred for conducting camps at village levels, do not strictly fall within the scope of 'fee for professional services' which alone can be considered as falling within the scope of the provisions of section 194J of the Act. In this view of the matter, we set aside the order of the CIT(A) on this aspect, and direct the assessing officer to bifurcate the payments made by the assessee trust to the hospitals into various elements as noted above and confine the demand raised in terms of section 201(1) of the Act, only to the payments which assume the nature of fee for professional services, as noted above."

9.5 In conformity with the above findings of the co-ordinate bench of the Tribunal, we direct the assessee is directed to file the list of payments made by it

to the hospitals duly bifurcated into various elements as noted above and furnish the same before the Assessing Office. The Assessing Officer shall examine the details so filed and compute the demand u/s. 201(1) and 201(1A) on the fees for 'professional services'. Further, we also make it clear that if the payments are made to the hospitals which are below the prescribed limit of applicability of provisions of section 194J of the Act, the said payments shall also be excluded for making the assessee liable for tax u/s. 201(1) and 201(1A) of the Act. With these directions, we dispose of the appeals of the assessee for the assessment years 2011-12 to 2013-14.

10. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on this 17th May, 2019.

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 17th May, 2019

GJ

Copy to:

1. The Regional Director/2. State Medical Commissioner, Employees State Insurance Corporation, Regional Office, Round North, Thrissur.
3. The Income Tax Officer(TDS), Thrissur.
4. The Commissioner of Income-tax(Appeals), Thrissur.

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& 18-21/Coch/2018

5. The Pr. Commissioner of Income-tax, Thrissur.
6. D.R., I.T.A.T., Cochin Bench, Cochin.
7. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin