

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No. 3898/Del/2017
Assessment Year: 2013-14**

**Dr. Tripat Choudhary,
C-402, Defence Colony,
New Delhi.
PAN AAEPC7216L**

**vs ACIT, Circle-63(1),
New Delhi.**

(Appellant)

(Respondent)

**Appellant by: Shri Sanjay Sood
Respondent by: Shri N.K. Bansal, Sr. DR**

**Date of hearing: 17/7/2019
Date of order : 23/7/2019**

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 03.04.2017 in Appeal No.436/15-16 for the Assessment Year 2013-14 passed by the Commissioner of Income-tax (Appeals)-20, New Delhi {"Id, CIT(A)}, assessee preferred this appeal.

2. Assessee is a medical Doctor. For the Asstt. Year 2013-14, he had filed his return of income on 1.10.2013 declaring an income of Rs.2,81,58,710/-. The assessment, however, was completed at

Rs.2,87,87,590/- with three additions, namely, Rs.4957/- on account of disallowance u/s 14A of the Income-tax Act, 1961 (the Act), Rs.5,75,500/- on account of disallowance u/s 40(a)(ia) of the Act and Rs.48,422/- on account of disallowance out of personal expenses.

3. In appeal, learned CIT(A) deleted the addition made u/s 14A of the Act and reduced the ad hoc disallowance of Rs.48,422/- but confirmed the addition of Rs.5,75,500/- made u/s 40(a)(ia) of the Act. Hence, this appeal is filed by the assessee challenging the said addition.

4. Brief facts relating to this addition are that on a perusal of the profit and loss account of the assessee, Id. AO found that the assessee had debited a sum of Rs.5,96,100/- on account of professional fee paid but no TDS was deducted on the payment of professional fee to the tune of Rs.5,75,500/- u/s 194J of the Act, which is mandatory in case of any payment exceeding Rs.30,000/-. This amount was paid to Ms Kanchan Gupta.

5. Assessee explained before the Id. AO that the professionals/ Assistant Doctors were engaged by Fortis Hospital directly and their services were placed at the disposal of the assessee and for such placement of their services Fortis Hospital recovered the payments to be made to the professionals. Assessee further submitted that Fortis Hospital while making payments to the professionals deducted TDS and, therefore, the assessee is not liable to make any deduction u/s 194J of the Act. Lastly, AO did not make any note on this submission

of the assessee but simply recorded that since the assessee had not deducted TDS as per Section 194J of the Act, provisions of Section 40(a)(ia) are applicable and the amount of Rs.5,75,500/- claimed as deduction under the head "Testing charges" was to be disallowed and added back to the income of the assessee.

6. In appeal, similar plea was taken by the assessee before the CIT(A) but Id.CIT(A) having called for Form 16A in respect of the professionals to whom the payments were made by the Fortis Hospital and looking into the same found that in the computation of income, the assessee has claimed TDS of Rs.27,99,293/- but the professional receipts of Rs.2,79,89,649/- which shows that Fortis Hospital had deducted tax u/s 194J of the Act on the gross professional receipts of the assessee and if the claim of the assessee is correct, the salary of Dr. Deepti Mishra and Dr. Kanchan Gupta would also have been claimed as expenses whereas the fact is that the assessee has only claimed the professional fee paid to Dr. Kanchan Gupta to the tune of Rs.5,75,500/-. According to the Id. CIT(A), it is strange that as per the claim of the assessee, hospital was deducting TDS twice on the professional fee payment of the Assistant Doctors; once when the TDS is made on the gross amount of professional fee paid to the assessee and secondly, when the actual payment is made by the hospital to those professionals. Learned CIT(A) further observed that if this system is working then both Fortis Hospital as well as assessee can claim deduction of professional fee

paid to the Assistant Doctors for their respective profit and loss account, which is not permissible.

7. Learned CIT(A) expressed a doubt that whether the claim of payment to Dr. Kanchan Gupta to the tune of Rs.5,75,500/- is the same payment which Fortis Hospital had paid as per figures of Form 16A of Dr. Kanchan Gupta showing Rs.4,95,500/-. For these reasons, Id. CIT(A) rejected the contention of the assessee and dismissed the ground of appeal.

8. It is argued before us by the learned counsel for the assessee that the assessee had not engaged the professionals directly nor made any payment to them but assessee being a medical doctor attending Fortis Hospital was provided with the services of the Assistant Doctors and charges for such services were recovered from the amount payable to the assessee, and the assessee is, therefore, not liable to deduct any TDS in respect of the payments made to the doctors.

9. A certificate dated 7.3.2017 issued by Fortis Hospital to be found at page No.15 of the paper book clearly establishes that an amount of Rs.4,64,500/- and Rs.1,11,000/- was retainer ship fee paid by the Fortis Health Management on various dates to Dr. Kanchan Gupta with PAN AIKPG8376R and Dr. Deepti Mishra with PAN AKPPM1465Q respectively and such total amount of Rs.5,75,000/- was deducted from the fee paid to the assessee. This obviates many doubts created in the mind of Id. CIT(A) in respect of the professional

fee received by the assessee and paid to other doctors. It is very clear that Fortis Hospital engaged the professional, made retainer ship fee to them and since the services of such retainers was provided to the assessee, an amount of Rs.5,75,000/- was deducted from the fee paid to the assessee. No occasion for the assessee to effect any deduction in respect of the amounts paid to the professionals would arise.

10. In these circumstances, it is difficult to hold that the assessee is personally responsible to deduct the tax at source or that there is any default in such an obligation. We, therefore, are of the considered opinion that assessee is not liable to make any deduction in respect of the payments made to the professionals and what all the assessee had received is the net sum after recovering the payments made to such doctors. We, therefore, hold that the addition cannot be sustained and the same has to be deleted.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23rd July, 2019.

Sd/-

sd/-

(O.P. KANT)
ACCOUNTANT MEMEBR

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated 23rd July, 2019
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By order

Assistant Registrar

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