आयकर आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन,न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A Nos. 733 to 744 /CHNY/2019**
निर्धारण वर्ष /Assessment Years: 2005-06 to 2010-11

Family Health Plan (TPA) Ltd., Block-G, III Floor, Ali Towers, 22, Greams Road Chennai – 600 008	Vs.	Income Tax Officer TDS Ward I(2) Chennai

[PAN : AAACF 1740R]

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T. Banusekar, CA
प्रत्यर्थी की ओर से/Respondent by : Smt. G.D. Jayanthi Angayarkanni, JCIT

सुनवाई की तारीख/Date of Hearing : 21.08.2019
घोषणा की तारीख/Date of Pronouncement : 19.11.2019

आदेश /O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

These appeals of the Assessee are directed against the common orders of the learned Commissioner of Income Tax (Appeals)-17, Chennai passed U/s.201(1) as well as U/s.201(1A). The common grounds of appeal raised by the Assessee in ITA Nos.739, 740, 741, 742, 743 and 744/CHNY/2019 are reproduced as under:

1. *For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the appellant and is opposed to the principles of natural justice, equity and fair play.*
2. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the TDS Officer is without jurisdiction.*
3. *For that the order passed U/s.201(1) is barred by limitation.*
4. *For that the Commissioner of Income Tax (Appeals) erred in upholding the demand raised U/s.201(1).*
5. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant is not liable to deduct tax at source under the provisions of the Income Tax Act.*
6. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 194J is not evocable in the facts and circumstances of the case.*
7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the payments made by the appellant company to the hospitals is not in the nature fees for professional services.*
8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the payments were made by the appellant company under a contractual obligation that it has with the insurance company, the insurance company in turn paying the hospital in terms of a contract of indemnity.*
9. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that when the person insured (being an individual) himself is not liable to deduct tax at source under the provisions of section 194J, there is no obligation on the part of the appellant company to deduct tax at source on the payments made on behalf of the person insured to the hospitals.*
10. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the onus is on the revenue to verify whether the deductee assessees have shown the impugned payments as income and have paid the relevant taxes due on such amount.*
11. *For that assuming without conceding that tax is deductible at source on the payments made to the hospitals, the Commissioner of Income Tax (Appeals) failed to appreciate that the obligation is on the insurance company to deduct tax at source and not on the appellant company.*

The common grounds of appeal raised by the Assessee in ITA Nos.733, 734, 735, 736, 737 and 738/CHNY/2019 are as under:

1. *For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent*

prejudicial to the appellant and is opposed to the principles of natural justice, equity and fair play.

2. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the TDS Officer is without jurisdiction.*
3. *For that the order passed U/s.201(1A) is barred by limitation.*
4. *For that the Commissioner of Income Tax (Appeals) erred in upholding the interest levied U/s.201(1A).*
5. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 201(1A) are evocable in the facts and circumstances of the case.*
6. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant is not liable to deduct tax at sources under the provisions of the Income Tax Act.*
7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 194J is not invocable in the facts and circumstances of the case.*
8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the payments made by the appellant company to the hospitals is not in the nature of fees for professional services.*
9. *For that the Commissioner of Income Tax(Appeals) failed to appreciate that the payments were made by the appellant company under a contractual obligation that is has with the insurance company. The insurance company in turn paying the hospital in terms of a contract of indemnity.*
10. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that when the person insured (being an individual) himself is not liable to deduct tax at source under the provisions of section 194J, there is no obligation on the part of the appellant company to deduct tax at source on the payments made on behalf of the person insured to the hospitals.*
11. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the onus is on the revenue to verify whether the deductee assessees have shown the impugned payments as income and have paid the relevant taxes due on such amount.*
12. *For that assuming without conceding that tax is deductible at source on the payments made to the hospitals, the Commissioner of Income Tax (Appeals) failed to appreciate that the obligation is on the insurance company to deduct tax at source and not on the appellant company.*
13. *For that without prejudice to the above, the TDS Officer erred in the computation of period, for levy of interest U/s.201(1A).*

2. M/s Family Health Plan (TPA) Ltd., the assessee, is a company acting as a Third Party Administrator (TPA) in respect of

various general insurance companies and processes the insurance claims for those insurance companies. The role of the assessee includes making payments for the medical treatment and other services availed by the insured at the various networked and non-networked hospitals. The claims in respect of the medical treatment and other services availed by the insured (patients) are processed by the assessee in its capacity as a TPA on behalf of insurance companies. After due processing, the assessee company makes the payment of the approved sums to the hospitals. For purposes of meeting the expenditure on this account, the insurance companies place certain amounts of money at the disposal of the TPA in the form of a Float Fund Account maintained with banks to be specifically utilized for this purpose. As and when the funds are fully utilized / depleted, the principals i.e., the insurance companies replenish the same.

2.1 The Assessing Officer considered that the payments made to the hospitals in lieu of medical services rendered partakes the nature of 'payment for professional services' as provided under section 194J and the applicability of Sec.194J in respect of payments made by

TPAs to hospitals was also clarified by the Board vide Circular No.8/2009 dated 24.11.2009 in F.No.385/08/2009 - IT(B) wherein it was provided that all payments made by TPAs to hospitals on behalf of insurance companies for settling medical or insurance claims would attract the provisions of Sec. 194J of the Act. The Circular, inter-alia, provided relief to the deductors (TPA) who could substantiate that the relevant taxes had been paid by the deductee assessee (Hospitals etc.) and for this purpose an auditor's certificate that the tax and interest due from the deductee assessee has been paid for the relevant assessment year would be sufficient compliance etc. However, on verification, the AO found that the assessee was not deducting TDS in respect of the payments made by it to various hospitals for the services rendered by them. Therefore, the Assessing Officer issued a show cause notices dated 27.11.2009 to the Principal Officer of the assessee. The assesssee filed Writ Petitions No.302 & 303 of 2010 before the Hon'ble High Court of Madras on 05.01.2010 challenging the issue of show cause notices as well as questioning the validity of Board's Circular dated 24.11.2009. The Hon'ble High Court ordered an interim stay on the proceedings relating to the show cause notice which was further

extended. Subsequently, the assessee withdrew the writ petitions and accordingly the Hon'ble High Court dismissed the same vide the order dated 16.12.2014 holding, inter alia, that

> *" ... Since the validity of the circular has already been upheld by various High Courts in the country including the Bombay High Court and Delhi High Court, the petitioner has today withdrawn the Writ Petitions challenging the validity of the circular dated 24. 11.2009. Therefore, the petitioner is bound by the said circular."*

and directed the assessee company to respond to the show cause notices within eight weeks.

2.2 After considering various submissions of the assessee, the Assessing Officer passed orders U/s.201(1) and U/s 201(1A) dated 11.09.2015 and 12.11,2005, respectively, raising the demand for the assessment years from 2005-06 to 2010-11. In passing those orders, the TDS Officer has:

- *Exempted from the computation, the quantum of tax deductible in cases where certificates from Chartered Accountants have been furnished to show that the incomes have been admitted by the recipients and taxes have been paid by them.*

- *Treated the assessee as a defaulter in respect of the tax deductible, in cases where the assessee could not produce the certificates from Chartered Accountants of recipients to show that taxes have been*

paid by the recipients, stating that the assessee would be covered by the Board's Circular dated 24.11.2009

- *Levied interest U/s. 201 (1A) on all the payments including those payments on which the demand U/s.201 (1) was not raised stating that according to the Board's Circular dated 24.11.2009 the interest and the penalty is leviable even on such payments .*

- *While calculating the interest U/s.201 (1A), the AO determined the period of levy as under :*

  In the cases where the certificates from Chartered Accountants has been furnished, the AO calculated the interest for the period from the month of October of the relevant previous year till the month in which the return of income ought to have been filed i.e. due date for filing the return of income or up to the month in which the return of income was actually filed

  In the cases where the certificates from Chartered Accountants has not been furnished, the AO calculated the interest for the period from the month of October of the relevant previous year till September 2015.

3. Aggrieved, the assessee filed appeals before the CIT(A). The ld CIT (A), inter alia, relying on the decisions of Vipul Medcorp TPA P Ltd Vs ACIT, Circle 51(1), New Delhi (2018) taxmann.com 670 (Del-Trib) and Medi Assist India TPA P Ltd Vs DCIT (TDS), Circle 18(1) (2009) 184 taxmann 359 (Karnataka) upheld the demand raised U/s.201(1) and U/s 201(1A) for the assessment years from 2005-06 to 2010-11. With regard to the period for the levy of interest,

the ld.CIT(A) held that since the assessee has not furnished the required details before him, he directed the AO to verify the correctness of the assessee's claim and adopt the correct period for the levy of interest. Aggrieved against these orders, the assessee filed the above appeals.

4. For the assessment years: 2005-06 to 2008-09, the ld.AR took us through the sequence of events as under:

Date	*Events*
27.11.2009	*Date of issue of show cause notice by TDS officer*
05.01.2010	*Date of filing of writ petition before Madras HC*
07.01.2010	*Order of Madras HC granting stay for a period of 8 weeks*
05.08.2010	*Order of Madras HC extending period of interim stay granted until further orders*
31.03.2011	*Due date for passing order as per proviso to section 201(3) for the assessment years 2008-09 and assessment years prior to AY 2008-09*
16.12.2014	*Order of Madras HC disposing off writ petition*
04.02.2015	*Receipt of order of Madras HC*
01.04.2015	*Expiry of eight week period granted by HC, from the date of receipt of order of Madras HC, for assessee to submit its reply to the SCN*
31.05.2015	*Extended time for passing order as per proviso to explanation 1(ii) to section 153 [60 days will be available for passing the order after excluding the stay period and the time granted by HC for submitting reply to SCN by assessee.]*
11.09.2015	*Date of passing of orders U/s.201(1) and 201(1A)*

For the assessment year 2009-10, the ld AR took us through the sequence of events as under:

Date	*Events*
27.11.2009	*Date of issue of show cause notice by TDS officer*
05.01.2010	*Date of filing of writ petition before Madras HC*
07.01.2010	*Order of Madras HC granting stay for a period of 8 weeks*
05.08.2010	*Order of Madras HC extending period of interim stay granted until further orders*
31.03.2012	*Due date for passing order U/s.201(3) for assessment year 2009-10, where statement is filed U/s.200*
16.12.2014	*Order of Madras HC disposing off writ petition*
04.02.2015	*Receipt of order of Madras HC*
01.04.2015	*Expiry of eight week period granted by HC, from the date of receipt of order of Madras HC, for assessee to submit its reply to the SCN*
31.05.2015	*Extended time for passing order as per proviso to explanation 1(ii) to section 153 [60 days will be available for passing the order after excluding the stay period and the time granted by HC for submitting reply to SCN by assessee]*
11.09.2015	*Date of passing of order U/s.201(1) and 201(1A)*

4.1 Thereafter, ld.AR submitted that the orders passed U/s.201(1) and 201 (1A) for the assessment years 2005-06 to 2008-09 are barred by limitation. In this regard, the ld.AR submitted that the due date for passing order U/s.201(1) in case of financial years commencing on or before 01.04.2007 (i.e. for financial year 2007-08 and financial years prior to financial year 2007-08) was 31.03.2011, as per proviso to section 201 (3) inserted by Finance (No.2) Act,

2009 w.e.f. 01.04.2010. The assessee had challenged the show cause notices issued by TDS officer in a writ petition before the Madras HC and obtained interim stay. Final order of the Madras HC disposing off the writ petition was passed on 16.12.2014 and the said order was received by the assessee on 04.02.2015. The Madras HC had allowed a period of 8 weeks from the date of receipt of the order for the assessee to submit its reply to the show cause notice and to raise all its contentions in law as well as on facts. The 8 weeks' time limit expired on 01.04.2015. On the date of expiry of time limit allowed to assessee for filing its submissions, the time limit for passing the order U/s.201 (1) has expired for assessment years 2005-06 to 2008-09. However, by virtue of proviso to explanation 1 (ii) to section 153, if 60 days is not available for passing the order after excluding the stay period and the time limit granted by the HC for submitting reply to the show cause notice, then a period of 60 days will be available for passing the order U/s.201 (1) from the date of expiry of 8 week time limit granted by Madras H C. Therefore, the extended time period for passing the order U/s.201 (1) will be 31.05.2015. However, in the instant case, the orders have been passed on 11.09.2015 only and hence those orders are barred by

limitation. As a result thereof, the orders passed U/s.201 (1A) are also barred by limitation and relied on the decision in the case of ACIT v Peps; Foods Ltd [2004J 88 TTJ (Del) 111J.

4.2 With regard to the orders passed for the assessment year 2009-10, the ld.AR submitted that the due date for passing order U/s.201 (1) as per section 201 (3) inserted by Finance (No.2) Act, 2009 w.e.f. 01.04.2010 is within (i) two years from the end of the financial year where statement U/s.200 is filed (ii) 6 years from the end of the financial year in which payment or credit is made in any other case. The assessee had filed statement U/s.200 for Form Nos.260 and 240 and the last quarter of such forms was filed in the month of May 2009 i.e. in financial year 2009-10. Therefore, the time limit for passing order U/s.201 (1) in such circumstances would be 31.03.2012 i.e. two years from the end of the financial year where statement U/s.200 is filed. The assessee had challenged the show cause notice issued by TDS officer in a writ petition before the Madras HC and obtained stay. Final orders of Madras HC disposing off the writ petition was passed on 16.12.2014 and the said order was received by the assessee on 04.02.2015 .The Madras HC had

allowed a period of 8 weeks from the date of receipt of the order for the assessee to submit its reply to the show cause notice and to raise all its contentions in law as well as on facts. The 8 weeks' time limit expired on 01.04.2015. On the date of expiry of time limit allowed to assessee for filing its submissions, the time limit for passing the order U/s.201 (1) has expired for the assessment year 2009-10. However by virtue of proviso to explanation 1 (ii) to section 153, if 60 days is not available for passing the order after excluding the stay period and the time limit granted by the HC for submitting reply to the show cause notice, then a period of 60 days will be available for passing the order U/s.201 (1) from the date of expiry of 8 week time limit granted by Madras HC. Therefore, the extended time period for passing the order U/s.201 (1) will be 31.05.2015. However, in the instant case the orders have been passed on 11.09.2015 only and hence the same are barred by limitation

4.3 Alternatively, the ld.AR submitted that if the assessee is to be covered under clause (ii) of section 201 (3) i.e. the due date for passing order U/s.201 (1) is 6 years from the end of the financial year in which payment or credit is made, then the due date for passing

order will be 31.03.2015. In this case also, on the date of expiry of time limit allowed to assessee for filing its submissions i.e on 01.04.2015, the time limit for passing the order U/s.201 (1) has expired. However by virtue of proviso to explanation 1 (ii) to section 153, if 60 days is not available for passing the order after excluding the stay period and the time limit granted by the HC for submitting reply to the show cause notice, then a period of 60 days will be available for passing the order U/s.201 (1) from the date of expiry of 8 week time limit granted by Madras HC. Therefore, the extended time period for passing the order U/s.201 (1) will be 31.05.2015. However in the instant case, the orders have been passed on 11.09.2015 only and hence those order are barred by limitation. As a result thereof, the order passed U/s.201 (1A) is also barred by limitation.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Sub-section (3) of Section 201 of the Act as it stands now reads as follows:-

> Consequences of failure to deduct or pay
> 201.
> (1) …… ….. ….. ….. …… ….. …..

(2) …… …… ….. ….. ….. ….. …..
(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

5. By Finance Act, 2014 with effect from 01.10.2014, provisions of sub-section (3) was amended. Before the amendment, sub section (3) of Section 201 of the Act reads as follows:-
(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of –

(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed ;
(ii) six years from the end of the financial year in which payment is made or credit is given, in any other case :
Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.

Clause ii of Explanation 1 to Section 153 and its proviso is extracted as under :-

153. Time limit for completion of assessment, reassessment and recomputation.
153(1)……..
……..
Explanation 1 …….
(i) ……
(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
..……
shall be excluded.

> Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly."

5.1 In view of the above, it is clear that the Assessing Officer has passed the orders for the assessment years 2005-06 to 2009-10 beyond the period of limitation, as canvassed by the assessee, supra, and therefore these orders cannot stand in the eye of law. In view of the above, the orders of both the authorities below are set aside and the tax and interest demand for the assessment years 2005-06 to 2009-10 are deleted.

6. With regard to the issues for the assessment year 2010-11, the ld.AR submitted that Section 194J not attracted, hence Circular cannot introduce a liability which is not envisaged in the Act. Further, he submitted that the payment made by the assessee to the hospital is by virtue of a contractual obligation with the insurance company and does not arise on account of any professional or technical service rendered by the hospital. Payment due from an individual to

the hospital may be construed as fees for professional services but in the hands of the assessee, who is an agent it cannot be considered as fees for professional service but just settlement of insurance claim. Even if the insurance company makes the payment directly, it is only in the nature of insurance compensation to indemnify the insured under the circumstances covered by the insurance contract. The amount paid is basically reimbursement of the cost of treatment that was covered for the individual. The person actually responsible for payment is the insured individual. Therefore, even the insurer should not be subjected to TDS. Without prejudice to the contention that insurer is not liable to TDS, the assessee only acts as an agent of the Insurance Company. The Insurance Company provides the Third Party Administrator (TPA) with a corpus fund for the processing and disbursement of claims to the insured. If at all, any liability arises, it cannot be fastened to the agent. It is only the principal who would be liable for deduction of tax at source .As per Proviso 3 to section 194J, "individual or HUF shall not be liable to deduct tax if such sum is paid or credited exclusively for personal purpose. Therefore, since the expenditure is incurred exclusively for a personal purpose, the individual, being the person responsible for making the payment is

not obligated to deduct tax. Therefore, TDS obligation does not arise at any stage since if no insurance cover is taken and the payment is made directly by the patient to the hospital offering the treatment, question of deducting tax will never arise. Since Circulars, being delegated legislation, cannot run contrary to the provisions of the Act, it can have binding force only upto the level of assessment.

7. With regard to the levy of interest U/s. 201 (1A), the ld.AR submitted that the interest U/s 201 (1A) arises only when the person is treated as an 'assessee in default' as per the provisions of Section 201(1). Since, there is no liability to deduct tax at source, the question of deeming the assessee as in default and levy of interest U/s 201 (1 A) will not arise in the instant case. Without prejudice to the argument that no interest is leviable U/s 201 (1A), the hospitals to whom the assessee has paid sums would have paid advance tax on the income received. Therefore, where the advance tax has already been paid, interest should be levied only on the shortfall in payment of taxes since almost 90% of the taxes would have been recovered through advance tax. In this regard, the ld AR relied on the decision of ACIT v Apollo DKV Insurance Co. Ltd. in ITA No.2816 / Del /2012

(C.O.No.291/Del/2012) dated 12.01.2014 for the assessment year 2009-10.

7.1 Per contra, the Ld DR relying on the decisions of Vipul Medcorp TPA P Ltd Vs ACIT, Circle 51(1), New Delhi (2018) taxmann.com 670 (Del-Trib) and Medi Assist India TPA P Ltd Vs DCIT (TDS), Circle 18(1) (2009) 184 taxmann 359 (Karnataka) supported the order of the ld.CIT(A) .

7.2 We heard the rival submissions and gone through the decisions relied on by the ld.CIT(A), supra. It is clear from them that the third party administrator, who is responsible for making payment to hospitals for rendering medical services to policy holders under various health insurance policies issued by several insurers, he is obliged to deduct tax at source U/s.194J from the payments made to hospitals. Therefore, we do not find any merit in the submission of the assessee and hence, the corresponding grounds of the assessee are dismissed. With regard to the levy of interest U/s.201A, we find that this assessee's case is almost on similar facts and circumstances and hence in line with the decision canvassed by the

assessee, supra. Therefore following that case, we hold that 90% of the advanced tax must have been paid by those hospitals and therefore we direct the Assessing Officer to levy the interest on the shortfall of 10% of TDS amount up to the date of filing of returns by the deductees U/s.201(1A). To this extent the assessee's appeal is allowed for assessment year 2010-11.

8. In the result, the assessee's appeals for assessment years 2005-06 to 2009-10 in ITA Nos.733 to 737, 739 to 743/CHNY/2019 are allowed and the appeals for the assessment year 2010-11 in ITA Nos.738 & 744/CHNY/2019 are partly allowed.

Order pronounced in the Court on 19th November, 2019 in Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन)	(एस जयरामन)
(N.R.S. Ganesan)	(S. Jayaraman)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 19th November, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF