

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR

आयकर अपील सं./I.T.A. Nos. 1072 to 1074/Ahd/2017
(निर्धारण वर्ष / Assessment Years : 2013-14 to 2015-16)

| | | |
|---|---------------------|--|
| Gujarat Sickle Cell Anemia Control Society (Under The Control of Health, Medical Services And Medical Education) 2 nd Floor, Block No.5/2, Dr. Jivraj Mehta Bhavan, Gandhinagar, Gujarat - 382010 | बनाम/ Vs. | Dy. Commissioner of Income Tax, TDS Circle 2 nd Floor, Amrut Jayanti Bhavan, Navjivan Trust Building, Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTG8380N | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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|---------------------------------------|---------------------------------|
| अपीलार्थी ओर से/Appellant by : | Shri Rupesh R. Shah, A.R. |
| प्रत्यर्थी की ओर से / Respondent by : | Shri Purushottam Kumar, Sr.D.R. |

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|---------------------------------------|------------|
| सुनवाई की तारीख / Date of Hearing | 05/04/2022 |
| घोषणा की तारीख /Date of Pronouncement | 18/04/2022 |

ORDER

PER MAHAVIR PRASAD, JM:

The captioned three appeals have been filed at the instance of the assessee against the orders of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short) vide Appeal Nos. CIT(A)-8/423/15-16, CIT(A)-8/424/14-15 &

CIT(A)-8/425/15-16; respectively, all dated 22.02.2017 arising in the assessment order dated all 08.01.2016 passed by the Assessing Officer (AO) under s. 201(1)/201(1A) of the Income Tax Act, 1961 (the Act) concerning AYs. 2013-14 to 2015-16.

2. Since, in all appeals facts & circumstances & issues are common, therefore, for the sake of brevity, we would like to dispose of these matters by way of a common order. ITA No. 1072/Ahd/2017 for A.Y. 2013-14 is taken as lead case for disposal of the above appeals.

3. The grounds of appeal raised by assessee in A.Y. 2013-14 read as under:

- “1. Both the lower authorities have erred in law and on the facts of the case in confirming the nature of Service agreement entered by the appellant with various agencies for supply of labour and work as "professional in nature" U/S.194J instead of 194C while framing the assessment u/s 201(1) /201(1 A) of the Act and while passing the appellate order under the facts and circumstances of the case the action of both the authority are required to be quashed.
2. The Ld CIT (A) has erred in law and on facts of the case has confirmed the interest charged U/s.201 (1A) of IT Act which otherwise not warranted as appellant has rightly deducted and paid required TDS and there is no loss to the revenue.
3. Both the lower authorities have failed to appreciate the facts and nature of work and held as professional work.
4. Both the lower authorities have erred in law and on facts in passing the orders without properly appreciating the facts and that he further erred in grossly ignoring various submissions, explanations and information agreement with various agencies submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of both the authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.”

4. Facts of the case are that the assessee is a society under the control of Commissioner of Health, Gandhinagar and various agencies were appointed for carrying out work of screening and subsequently submission of report to concerned authority. TDS on these payments was deducted @2% or at lower rate of 1% UNDER s.194C of the Act. In this regard, details were gathered during the course of survey as well as after the survey by issuing notices on various dates. The details of parties to whom payments were made under the project in different years starting from F.Y. 2012-13 to F.Y. 2014-15 and TDS deducted thereon is as per the table below:

| Sr. No. | Name of Agency | Amount Paid | Rate at which IDS Deducted | Amt. of TDS Rs. |
|---------------------|--|------------------|----------------------------|-----------------|
| F.Y. 2012-13 | | | | |
| 1 | SCHAMKA Technology Pvt. Ltd. | 28973253 | 2% | 591290 |
| 2 | Indian Red Cross Society | 796670 | 2% | 16258 |
| 3 | Valsad Raktdan Kendra | 7333450 | 2% | 149663 |
| 4 | Kruise Pathline Pvt. Ltd. | 3783166 | 2% | 77207 |
| 5 | Heaithfore Technologies Ltd. (Formerly known as Religare Technologies Ltd.) | 14658601 | 2% | 299156 |
| 6 | Indu Health Research Foundation Trust | 6753789 | 2% | 137832 |
| 7 | Roman Development Consultants Pvt. Ltd. | 2575913 | 2% | 52570 |
| Total | | 64874842 | | 1323976 |
| F.Y. 2013-14 | | | | |
| 8 | SCHAMKA Teknology Pvt. Ltd. | 56328825 | 2%, 1% | 659902 |
| 9 | Indian Red Cross Society | 1966110 | 2% | 39332 |
| 10 | Valsad Raktdan Kendra | 15663020 | 2% | 313263 |
| 11 | Kruise Pathline Pvt. Ltd. | 4296689 | 2% | 85933 |
| 12 | Heaithfore Technologies Ltd. (Formerly known as Religare Technologies Ltd.) | 28143675 | 2% | 562886 |
| 13 | Indu Health Research Foundation Trust | 9858948 | 2% | 197178 |
| 14 | Roman Development Consultants Pvt. Ltd. | 2820048 | 2% | 56401 |
| Total | | 119077315 | | 1914895 |

| F.Y. 2014-15 | | | | |
|---------------------|--|------------------|---------|----------------|
| 15 | SCHAMKA Technologies Pvt. Ltd. | 65154471 | 2%, 1 % | 672006 |
| 16 | Indian Red Cross Society | 2948352 | 2% | 58967 |
| 17 | Valsad Raktdan Kendra | 11973396 | 2% | 239469 |
| 18 | Kruise Pathline Pvt. Ltd. | 1075800 | 2% | 21515 |
| 19 | Heaithfore Technologies Ltd. (Formerly known as Religare Technologies Ltd.) | 16772892 | 2% | 335457 |
| 20 | Indu Health Research Foundation Trust | 18110895 | 2% | 362218 |
| 21 | Roman Development Consultants Pvt. Ltd. | 1184139 | 2% | 23682 |
| | Total | 117219945 | | 1713314 |

In this case, the assessee has entered into agreement with the abovementioned entities for the purpose of carrying out screening (i.e. DTT test, HPLC test etc.) of Sickle Cell Anemia in tribal district of Gujarat. It was seen that the function performed by the above entities fall under the purview of professional services/managerial and consultancy services as per section 194J of the Act and therefore liability of the deduction of tax arises @ 10% u/s 194J instead of u/s 194C. Section 194J contemplates as under:

" [Fees for professional or technical services.

194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

*(a) fees for professional services, or
(b) fees for technical services[or]*

[(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or]

[(c) royalty, or

(d) any sum referred to in clause (va) of section 28,]

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 48 [ten] per cent of such sum as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

- (A) *from any sums as aforesaid credited or paid before the 1st day of July, 1995; or*
- (B) *where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—*
- (i) *[thirty thousand rupees], in the case of fees for professional services referred to in clause (a), or*
- (ii) *[thirty thousand rupees], in the case of fees for technical services referred to in 3 [clause (b), or]*
- (iii) *[thirty thousand rupees], in the case of royalty referred to in clause (c), or*
- (iv) *[thirty thousand rupees], in the case of sum referred to in clause (d) :]*

[Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :]

[Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.]

(2) [***]

(3) [***]

Explanation. — For the purposes of this section, —

(a) *"professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified ' by the Board for the purposes of section 44AA or of this section;*

(b) *"fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (I) of section 9;*

[(ba) "royalty " shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (I) of section 9;

(c) *where any sum referred to in sub-section (I) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly."*

Section 194C contemplates as under:

"194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) (ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided *that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds one lakh rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.*

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and

furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

Explanation.—For the purposes of this section,—

- (i) "specified person" shall mean,—*
 - (a) the Central Government or any State Government; or*
 - (b) any local authority; or*
 - (c) any corporation established by or under a Central, State or Provincial Act; or*
 - (d) any company; or*
 - (e) any co-operative society; or*
 - (f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or*
 - (g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or*
 - (h) any trust; or*
 - (i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or*
 - (j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or*
 - (k) any firm; or*
 - (l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—*
 - (A) does not fall under any of the preceding sub-clauses; and*
 - (B) is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;*
- (ii) "goods carriage" shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE;*
- (iii) "contract" shall include sub-contract;*
- (iv) "work" shall include—*
 - (a) advertising;*

- (b) *broadcasting and telecasting including production of programmes for such broadcasting or telecasting;*
- (c) *carriage of goods or passengers by any mode of transport other than by railways;*
- (d) *catering;*
- (e) *manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,*

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.]”

The learned AO was not agreed with the contention of the assessee and made an addition of Rs.75,38,722/- under s.201(1)/201(1A) of the Act.

5. Against the said order, assessee preferred first statutory appeal before the learned CIT(A) who partly allowed the appeal of the assessee.

6. We have heard both the parties and perused the materials available on record.

7. Now issue before us is whether assessee is liable to deduct tax under s.194J of the Act or Section 194C of the Act. The AO concluded on the basis of scope of agreement that the services carried out by the agencies are a professional service and include amount other things conducting different medical tests i.e. DTT, HPLC etc. for Sickle Cell Anemia on the target population, tagging population as per the tests performed, making a database of such tests & their results and making all data available to the society. The screening test is conducted as

per the guideline of the Government of Gujarat in this regard. The tests conducted by the personnel of the agencies in the field can be performed by medically qualified personnel and their report is submitted to society after approval of local Medical Officer. On the other hand, assessee's contention is that it has availed service of labour class and these labours don't have any technical qualification. Their job is to take out and collect blood sample and in agreement at page nos. 6 & 7, it is mentioned.

8. After going through the aforesaid service agreement, wherein it is clearly mentioned that:

i. assignee has to make required number of teams comprising of one lab tech, two para medical worker and one assistant for entry.

ii. Assignee has to make micro planning for screening with help of District Nodal officer and has to work accordingly

iii. Before starting the work in the district, Assignee has to do the interdepartmental meeting at district level in the chair of respective CDHO to inform about the detail of screening program.

iv. Assignee has to nominate one program coordinator for this entire screening program. He will be contacted by department as and when required.

v. Assignee has to do the screening work on all working days during month.

vi. Assignee will bring all required lab consumables, stationary, equipment, man power with team at the screening time.

vii. Assignee has to advertise widely regarding screening in the village by the mean of miking, folk media, etc.

viii. A laboratory technician will be with minimum qualification of MLT/ DMLT with science graduate. While para medical workers will be with minimum qualification of SI.

ix. These all staff must be trained for DTT testing before the screening.

As after going through it, it is apparent and clear from the terms of the agreement that technical persons carried out tests and Laboratory Technician will be with minimum qualification of MLT/DMLT with science graduate while paramedical worker will be with minimum qualification of SI. It is clear that aforesaid services come within Section 194J and 194C of the Act. Therefore, we do not find any ambiguity in the order passed by the learned CIT(A). In our considered opinion, learned CIT(A) has passed a detailed and reasoned order and same does not required any interference at our end.

9. Learned AR cited a judgment in case of Arihant Charitable Trust vs. ITO(TDS)-1, Indore, ITA No. 909/Ind/2019 as follows:

"1.7.3] At the outset, it is worth highlighting that for any payment to fall within the purview of 'fees for technical services', it is of utmost importance that payment is made for 'services' which are 'technical in nature'.

1.7.4] It has been categorically stated on Page No. 424-425 of the Eleventh Edition of Kanga & Palkhivala's 'The Law and Practice of Income Tax' that if the payment is made for availing Standard Facilities, then, it would not be termed as "Fees for Technical Services". [Page No. 41-42] 1.7.5] The Hon'ble Supreme Court of India in the case of CIT-4, Mumbai v. Kotak Securities Ltd. as reported in [2016] 383 ITR 1 (SC) had an occasion to elaborately discuss the difference between "facilities" and "services" and the Hon'ble Supreme Court of India has categorically held that "Technical services" like "Managerial and Consultancy service" would denote seeking of services to cater to the special needs of the consumer/user as may be felt necessary and the making of the same available by the service provider and if there is nothing special, exclusive or customized in the service, then, such services, would undoubtedly be termed as "facilities" and will not tantamount to "technical services" so as to attract the provisions of section 194J of the Income-Tax Act, 1961.

We are of the view that abovesaid judgment is not applicable in this case.

10. In the result, appeal filed by the assessee for A.Y. 2013-14 is dismissed.

11. ITA Nos. 1073 & 1074/Ahd/2017 for A.Ys. 2014-15 & 2015-16 are concerned, as we have dismissed appeal of the assessee for A.Y. 2013-14, so, in similar facts and

circumstances, the same shall apply mutatis mutandis in other two appeals.

12. In the result, all three appeals filed by the Assessee are dismissed.

This Order pronounced in Open Court on 18/04/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 18/04/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।