

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

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

आयकर अपील सं./I.T.A. Nos. 141 to 143/Ahd/2020
(निर्धारण वर्ष / Assessment Years : 2011-12 to 2013-14)

Joint Commissioner of Income Tax (OSD) TDS Circle, Ahmedabad	बनाम/ Vs.	M/s. Intas Pharmaceuticals Ltd. 203, Chinubhai Center, Off. Nehru Bridge, Ashram Road, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACI5120L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri James Kurian, CIT.DR. & Shri Purshottam Kumar, Sr. D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Vartik Chokshi, A.R.

सुनवाई की तारीख / Date of Hearing	04/05/2022
घोषणा की तारीख /Date of Pronouncement	23/05/2022

ORDER

PER MAHAVIR PRASAD, JM:

All three appeals have been preferred by the assessee against the orders of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short) vide Appeal Nos. CIT(A)-8/10103 & 10104/17-18 & CIT(A)-8/10106/17-18, Ahmedabad; respectively; under s. 250(6) of the Income Tax Act, 1961 (the Act) concerning AYs. 2011-12 to 2013-14

wherein learned CIT(A) granted relief to the assessee. Learned CIT(A) observed that expenditure of regional conference and scientific conferences have two parts i.e. for participation and for reimbursement of expenses are liable to deduction of tax under s.194H of the Act.

2. At the outset, learned AR filed a judgment of Hon'ble Jurisdictional High Court in assessee's own case and titled as CIT(TDS) vs. Intas Pharmaceuticals Ltd. R/Tax Appeal Nos. 172 to 177 of 2021 order dated 11.08.2021, wherein, in similar facts and circumstances, relief was granted by the Hon'ble Gujarat High Court to the assessee with following observations:

"1. All the six appeals filed by the Commissioner of Income Tax (TDS), Ahmedabad under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") are arising out of the common order dated 26.11.2020 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench "A" (hereinafter referred to as the "Tribunal") in ITA Nos.1269/Ahd/2017, 1270/Ahd/2017, 1271/Ahd/2017, 1184/Ahd/2017, 1185/Ahd/2017, and 1197/Ahd/2017, and therefore, they were heard simultaneously and this common order is being passed.

2. The ITA Nos.1184/Ahd/2017, 1185/Ahd/2017, and 1197/Ahd/2017 were filed by the ACIT, TDS Circle, Ahmedabad, challenging the orders passed by the CIT (Appeals), Ahmedabad dated 14.3.2017, 20.3.2017 and 24.3.2017 in the assessment proceedings under Section 201(1)/201(1A) of the said Act, and ITA Nos.1269/Ahd/2017, 1270/Ahd/2017, 1271/Ahd/2017 were filed by the respondent Assessee against the said three orders, before the Tribunal.

3. The brief facts giving rise to the present appeals are that the respondent Assessee is a limited Company engaged in the business of manufacturing and trading of pharmaceuticals. A survey under Section 133A of the Act was carried out at the premises of the assessee on 10.10.2013. As per the case of the appellant - Department, during the course of the said survey proceedings various E-mails were found, suggesting that the services provided to the doctors such as taxi services, booking of air- tickets, cost of souvenir and cost of registration for the conference for doctors, etc., and certain facilities provided to the doctors were in lieu of the business provided by them. These expenses were claimed by the assessee under various heads as its own expenses and no TDS was deducted on the same. The Assessing Officer took cognizance of the Notification issued by the Indian Medical Counsel dated 10.12.2009, which barred medical practitioners from taking gifts, travel facilities, hospitality, cash and monetary grants from any pharmaceutical industry and observed that the assessee had incurred the expenditure on the doctors for various conferences/workshops/camps etc., for which no TDS was deducted

under Section 194H of the said Act. The Assessing officer was of the view that the relationship between the assessee company and the doctors was that of the principal and agent, and therefore, the payments made under different heads for regional conference, scientific conference, sale promotion expenditure, etc., would fall within the definition of "commission". The Assessing officer, therefore, treated the assessee as an assessee in default under Section 201(1) for non-deduction of TDS under Section 194H of the said Act and raised the demand to the tune of Rs.19.76 crore under Section 201(1) of the said Act.

4. Being aggrieved by the said order passed by the Assessing officer, the respondent assessee had preferred the appeals before the CIT (Appeals), who partly allowed the said appeals of the assessee, by restricting the addition to the extent of expenditure incurred on the doctors under various heads. The CIT (Appeals) held that the expenses incurred on other stake- holders i.e. stockiests, dealers, field staff etc., did not fall within the definition of the term "commission". Being aggrieved by the said orders passed by the CIT (Appeals), the appellant - Department and the respondent - assessee preferred the appeals before the Tribunal as stated herein above. The Tribunal vide the impugned order dated 26.11.2020 partly allowed the appeals of the respondent - assessee and dismissed the appeals filed by the appellant Department. Hence, the present appeals have been filed by the appellant under Section 260A of the said Act.

5. The appellant in all the appeals has proposed the following substantial questions of law in the memorandum of the appeal:-

(A) "Whether the Appellate Tribunal has erred in law and on facts in holding that the expenditure incurred on doctors cannot be classified as commission and therefore, section 194H of the Act does not apply?

(B) Whether the Appellate Tribunal has erred in law and on facts in holding there is no element of agency despite the fact that documentary evidences establishing agency were found during the course of survey ?

(C) Whether the Appellate Tribunal has erred in law and on facts in holding that doctors were not bound to prescribe the medicines as suggested by the assessee without considering various facts brought on record by the Assessing Officer ?

6. All the appeals pertain to the respondent assessee in respect of the A. Y. 2011-12-2012- 13 and 2013-14.

7. The learned Sr. Counsel Mr. M. R. Bhatt appearing for the appellant Department vehemently submitted that the Tribunal had committed an error in not upholding the findings recorded by the assessing officer and the CIT (Appeals) to the effect that the expenditure incurred by the respondent assessee on the doctors was required to be treated as payment of commission, and therefore, Section 194H of the said Act would apply. According to Mr.Bhatt, the Assessing officer after perusing the statements of the General Manager, the Chief Finance Officer as well as after perusing various E-mails exchanged between the sales executive and the General Manager had categorically found that the doctors were committed to increase the business support of the assessee - company by rendering their services in the form of prescribing the medicines of the assessee company over a period of time and there was a contract between the assessee company and the doctors. According to

Mr. Bhatt the Tribunal had also committed an error in holding that there was no element of agency, ignoring the documentary evidence adduced by the Department establishing the unwritten agreement of agency between the assessee and the doctors. He further submitted that there was no reason for the Tribunal to disallow the findings of facts recorded by the assessing officer and the CIT (Appeals), who had treated the expenditure incurred on the doctors as "commission", and had accordingly made the respondent assessee liable to deduct the TDS under Section 194H of the said Act.

8. In order to appreciate the submissions of the learned Sr. Counsel Mr. Bhatt, it would be beneficial to reproduce the relevant provision contained in Section 194H of the Act:- "194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent :

Explanation.--For the purposes of this section,--

(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

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

(iii) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;

(iv) where any income 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."

9. From the bare reading of the said section, it clearly transpires that the assessee, who is not an individual or HUF, and who is responsible for paying to a resident, any income by way of commission or brokerage, has to deduct income tax at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issuance of cheque or demand draft or by any other mode, at the rate of 5% (at the relevant time, it was 10%). As per the relevant part of the Explanation contained in Section 194H, "commission or brokerage would include any payment received or receivable directly or indirectly by a person acting on behalf of another person for services rendered not being "Professional Services". What is "professional services" is also explained, according to which the services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession etc. On the conjoint reading of the

provisions contained in Section 194H and the Explanation thereof, there remains no shadow of doubt that any payment received or receivable by a person for rendering medical services is excluded from the purview of Section 194H of the Act.

10. In the instant case, as per the case of the appellant, the E-mails and other correspondences ensued between the sales executive and the General Manager, seized during the survey operations, suggested that the doctors had acted as the agents of the respondent - assessee, by prescribing the medicines of the respondent assessee over a period of time, and therefore, the expenses incurred by the assessee company on the doctors towards taxi-fare, air-fare, etc., for attending the regional conferences or scientific conferences were required to be treated as the "commission" received or receivable as contemplated under Section 194H of the said Act. It is difficult to accept the said submission made by the learned Sr. Counsel Mr. Bhatt. As rightly held by the Tribunal, the Explanation to Section 194H of the said Act cannot be interpreted so widely as to include any payment receivable, directly or indirectly for the services in the course of buying or selling of goods. To fall within the Explanation, the payment received or receivable directly or indirectly has to be by a person acting on behalf of the assessee for the services rendered, not being professional services or for the services in the course of buying or selling of goods or in relation to any transaction relating to any assets, valuable articles or thing. Therefore, to fall within the explanation to Section 194H, the commission payment must have been received by a person who is acting on behalf of the assessee. As rightly observed by the Tribunal, the doctors were not bound to prescribe the medicines as suggested by the assessee. As such there was no legal compulsion on the part of the doctors to prescribe a particular medicine suggested by the assessee, and therefore, the doctors could not be said to have acted as the agent of the assessee. In absence of the existence of the element of agency between the assessee and the doctors, the provisions contained in Section 194H of the Act could not be invoked.

11. In that view of the matter, the Court does not find any illegality or infirmity in the impugned order passed by the Tribunal. There being no question of law, much less substantial question of law involved in the present set of appeals, the appeals deserve to be dismissed and are dismissed."

On the other hand, learned CIT.DR and Sr.DR rely on assessment order. Since, these appeals are squarely covered in favour of the assessee by the abovesaid Hon'ble High Court's order, therefore, respectfully following the same, we dismiss appeal of the Revenue.

3. In the result, the appeal filed by the Revenue is dismissed.
4. So far remaining appeals i.e. ITA Nos. 142 & 143/Ahd/2020 are concerned, since we have dismissed the appeal of the Revenue for similar

facts and circumstances in ITA No. 141/Ahd/2020, same shall apply mutatis mutandis in these appeals.

5. In the result, all three appeals filed by the Revenue are dismissed.

This Order pronounced in Open Court on 23/05/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 23/05/2022

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 ।