IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.1850/DEL/2021
Assessment Year 2017-18

Government Polytechnic Education Society, Sampla, NH-10, Delhi Road, Sampla, Rohtak.	Vs.	ITO (TDS), Rohtak.
TAN/PAN: RTKG08173E		
(Appellant)		(Respondent)

Appellant by:	Shri Naveen Kumar Goyal, CA		
Respondent by:	Shri R.K. Jain, Sr.DR (Rotational Duty)		
Date of hearing:	07	02	2023
Date of pronouncement:	14	02	2023

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['CIT(A)' in short] dated 29.10.2021 arising from the assessment order dated 02.02.2021 passed by the Assessing Officer (AO) under Section 201(1)/201(1A) for alleged default towards non deduction of TDS from payments made to Guest faculties with reference to Section 194J of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

2. When the matter was called for hearing, the ld. counsel submitted that there are two types of payment. One is salary paid to regular staff and another payment is made to Guest faculties recorded under the head 'Professional and Special Services'. The

ld. counsel further submitted that concerned persons (guest faculty) have given an undertaking that TDS was not to be deducted as their income would be below taxable limit. The ld. counsel further adverted to list of remuneration paid to Guest Faculties for the Financial Year 2016-17 as tabulated at page no.33 of the paper book to justify that the receipts in the hands of Guest Faculties aggregating to Rs.24,94,090/- were below taxable limit when seen at individual basis. The ld. counsel next referred to order dated 04.12.2019 issued by 'Government of Haryana Technical Education' wherein the Haryana Government has fixed the norms/guidelines for utilization of services of faculty and Staff / Guest Faculty / Guest Instructor in educational activities and payment of monthly remuneration to such Guest Faculties / Guest Instructors. Adverting to paragraph 4 of the order, it was pointed out that the monthly remuneration as approved by the Government in respect of Guest Faculty/Guest Instructors will be paid from the contingency/wages head as their engagement is against teaching load and not against the sanctioned post. It was thus contended that such payments are in effect, payment of remuneration to such Guest Faculty and therefore, Section 192 will apply instead of Section 194J incorrectly applied by the Assessing Officer. It was thus submitted that when the payment to Guest Faculties are seen on the touchstone of Section 192, no default for non deduction of TDS could be reckoned and therefore, the provisions of Section 201/201(1A) is a complete non starter. To buttress, the plea that no default for non deduction of TDS towards monthly remuneration paid to Guest Faculties can be visualized, the ld. counsel referred to the decision of the Co-ordinate Bench in *ITA No.512 to 514/CHD/2014 & Ors order*

dated 12.08.2014 in the case of *ACIT (TDS) Chandigarh vs. MCM D.A.V. College for Women* and submitted that the Co-ordinate Bench of ITAT has adjudicated the identical situation in favour of the assessee. The ld. counsel thus urged for cancellation of the demand raised under Section 201(1)/201(1A) amounting to Rs.6,74,633/- on account of non deduction of TDS for a monthly remuneration paid to several Guest Faculties aggregating to Rs.24,94,090/-.

3. The ld. DR for the Revenue, on the other hand, supported the order of the CIT(A) and contended that the payment made to the professionals for obtaining their services are covered by Section 194J and therefore default has been rightly attributed to the assessee for non deduction of TDS on payments to such Guest Faculty rendering professional services.

4. We have carefully considered the rival submissions. The assessee society is running an educational institute at Sampla District Rohtak Haryana.

5. It is the case of the assessee that while the remuneration paid to the regular faculty staff is drawn from salary head and therefore, shown under the head ‘salary’ for accounting purposes, the remuneration paid to Guest Faculty is drawn from contingency/wages head in the light of the order of the Government of Haryana and thus shown under the head ‘Professional and Special Services’ in its income and expenditure account. However, the Guest Faculties are rendering the identical services and relationship between the management and the teaching faculties involve an obligation to obey orders and the work to be supervised and consequently the said relationship

could not be called 'contract for services' since the teaching staff does not render any professional or technical service. The monthly remuneration paid to the Guest Faculties are in the nature of 'contract of service' between the assessee deductor and its teaching staff appointed on *adhoc* basis and such *adhoc* salary paid to them being below taxable limit on individual basis, does not warrant deduction of tax at source and as such non deduction of tax at source does not trigger default under Section 201(1)/201A) of the Act. We simultaneously find that the assessment was completed under Section 143(3) vide order dated 09.07.2019. The assessment was carried out without making any adjustment to the returned income.

6. We also note that in the identical fact situation the Co-ordinate Bench of Tribunal has taken note of the judgment rendered by the Hon'ble Supreme Court in *Dharangadhra Chemical Works Ltd. vs. State of Saurashtra, (AIR 1957 SC 264)* which held as under:

> *"The prima facie test for the determination of relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer. A person can be a workman even though he is paid not per day but by the job. The fact that rules regarding hours of work, etc., applicable to other workmen may not be conveniently applied to them and the nature as well as the manner and method of their work would be such as cannot be regulated by any directions given by the Industrial Tribunal, is no deterrent against holding the persons to be workmen within the meaning of the definition if they fulfill its*

requirement."

7. The Co-ordinate Bench thus concluded that assessee cannot be treated as assessee in default in terms of Section 201(1)/201(1A) where the right in the master exists to supervise and control the work done by the Guest Faculties month after month. The issue in the present case is akin to the factual matrix existing in MCM D.A.V. College for Women (supra). Thus, in consonance thereof, we seen substantial merit in the plea advanced on behalf of the assessee.

8. We thus set aside the order of the CIT(A) and direct the Assessing Officer to delete the impugned demand under Section 201(1)/201(1A) of the Act.

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

Order pronounced in the open Court on 14/02/2023.

Sd/-	Sd/-
[CHALLA NAGENDRA PRASAD] **JUDICIAL MEMBER**	**[PRADIP KUMAR KEDIA]** **ACCOUNTANT MEMBER**

DATED: **/02/2023**

Prabhat

Copy forwarded to:

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

Assistant Registrar