

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
726/Hyd/2022	2020-21	Dist. Intermediate Educational Office, Rajanna Sircilla [TAN No. HYDD08748F]	Income Tax Officer (TDS), OSD-1, Hyderabad
32/Hyd/2023	2020-21	Income Tax Officer (TDS), Ward-1(1), Hyderabad	Dist. Intermediate Education Office, Komarambheem Asifabad, [TAN No. HYDD09731B]

निर्धारिती द्वारा / Assessee by: Shri Darshan Jakharia, AR  
राजस्व द्वारा / Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 15/02/2023  
घोषणा की तारीख/Pronouncement on: 28/02/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

The common question that arises in both these appeals is whether the Honorarium/Remuneration paid to the teachers in the Government colleges is in the nature of fee for professional services liable to TDS under section 194J of the Income Tax Act, 1961 ('the Act')?

2. Assesseees in both the appeals are the authorities appointed by and working under the directions of State Government with their main function to disburse the Honorarium/Remuneration to the teachers with whom the colleges enter into an agreement to perform the teaching work entrusted by the college committee in accordance with the curriculum of intermediate syllabus. Such teachers are paid a fixed monthly Honorarium/Remuneration which does not exceed Rs. 5 lakh.

3. Learned Assessing Officers took the view for the assessment year 2020-21 that the payments made to such contract teachers fall within the definition of the expression 'fee for professional services' under section 194J of the Act and accordingly, for non deduction of TDS on the payments made by the assesseees to the contract teachers, the assesseees are assesseees in default under section 201(1) of the Act and also further liable for simple interest on the tax.

4. Assesseees preferred appeals. In case of the assessee in ITA No. 32/Hyd/2023, the CIT(A), NFAC-Delhi took the view that the payments made by the assessee to the contract teachers for teaching in intermediate colleges do not fall in the definition of 'fee for professional services' and, therefore, they cannot be held as 'assessee in default', for not deducting the tax at source under section 194J of the Act; whereas in the case of the assessee, in ITA No. 726/Hyd/2022, a view is taken that for want of concrete pieces of evidence and full facts of the case, the order of the learned Assessing Officer had to be upheld. Inasmuch as contrary views are taken on the same aspect under similar circumstances for the same assessment year, we deem it just and proper to answer the issue in this common order.

5. According to the learned DR, the assesseees are neither individuals nor Hindu Undivided Families and the contract lecturers are professional in teaching and, therefore, the learned Assessing Officers are right in their approach to hold the assesseees as 'assesseees in default'. On this premise,

he found fault with the first appellate order in ITA No. 32/Hyd/2023 and supported the order in ITA No. 726/Hyd/2022.

6. Per contra, it is the submission on behalf of the assesseees that section 194J of the Act, by way of explanation qualifies the expression 'fee for professional services' and viewed from that angle, the payments made in this case are not for 'fee for professional services'. Reliance is placed on CBDT Notification No. 88/2008 dated 28/01/2008.

7. We have gone through the record in the light of the submissions made on either side. For a comprehensive understanding of the definition of 'fee for professional services', we deem it just and necessary to refer to the provisions under section 194J of the Act, which reads as under,-

*'194J. Fees for professional or technical services.—(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,*

*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 five 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) twenty thousand rupees, in the case of fees for professional services referred to in clause (a), or*

*(ii) twenty thousand rupees, in the case of fees for technical services referred to in clause (b).*



definition excludes the payments made to the contract teachers in intermediate colleges. Apart from this, the payment to none of the contract lectures exceeds Rs. 5 lakh and based on the slab rates and rebate under section 87A of the Act there would be no tax liability in the hands of the teachers.

10. In these circumstances, we are of the considered opinion that the payments made to the contract teachers do not answer the description of 'fee for professional services' and the impugned order in ITA No. 32/Hyd/2023 does not require any interference. On the same analogy, we find it difficult to sustain the impugned order in ITA No. 726/Hyd/2022 is liable to be reversed. Respective learned Assessing Officers are directed to delete the said additions.

11. In the result, appeal in ITA No. 32/Hyd/2023 is dismissed and appeal in ITA No. 726/Hyd/2022 is allowed.

Order pronounced in the open court on this the 28<sup>th</sup> day of February, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 28/02/2023

TNMM

Copy forwarded to:

1. Dist. Intermediate Educational Office, Shiva Nagar, Sircilla (Rural),  
Sircilla S.O.
2. Dist. Intermediate Educational Office, Komarambheem Asifabad,  
Beside Filter Bed, Collectorate Road, Adilabad.
3. Income Tax Officer(TDS)-OSD-1, Hyderabad.
4. Income Tax Officer(TDS), Ward-1(1), Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD