

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **427/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2013-14

Sri Kauvery Medical Care (India)
Ltd.,
1,2 and 3, KC Road,
Thennur,
Trichy – 620 017.

[PAN: AABCK-8115-E]

(अपीलार्थी/Appellant)

The Assistant Commissioner of
v. Income Tax,
TDS Circle,
Madurai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. A. Arjunraj, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 11.05.2023

घोषणा की तारीख/Date of Pronouncement

: 19.05.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 29.03.2022 and pertains to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

1. *The Order passed by the Appellate Authority is erroneous and unsustainable both in law and on facts and is liable to be set aside.*

2. *The Appellate Authority had failed to consider the various submissions and evidences on record before adjudicating the matter and the order is therefore vitiated.*

3. *The impugned Order is not a speaking one, as the Hon. Appellate Authority had not adduced any reason for rejecting the grounds and the cases relied on by the appellant*

4. *The reply submitted, submissions made and documents submitted before the Adjudicating and Appellate authority is to be treated as part and parcel of this appeal*

5. *The Learned Appellate Authority has listed out the services charges paid to the doctors who are said to have provided Professional services to the Appellant. The Learned Appellate Authority has failed to appreciate that these service charges are not paid to the doctors by the Appellant for the professional services provided by the doctors to the Appellant . These charges relates to the consultation fees received by said doctors directly by using the premises of the appellant to provide medical consultation to their patients. A memorandum book of. collections on behalf of the individual doctors are maintained by the staff.*

6. The Appellant is not required to Deduct Tax under Section 194J of the Income Tax Act,1961.

It is pertinent to refer to Section 194J of the Act. The relevant portion is as under:

fees for professional or technical services. 194J.
5 (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)	<i>fees for professional services, or</i>
(b)	<i>fees for technical services@, 7[or]</i>
[(ba)	<i>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]</i>
[(e)	<i>royalty, or</i>
(d)	<i>any sum referred to in clause (va) of section 28,]</i>

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 9[two per cent of such sum in case of fees for technical services (not being a professional services), or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent of such sum in other cases,] as income-tax on income comprised therein:

It is clear from the above that the person responsible for making any Professional payment referred to in 194J section are required to deduct TDS. In the instant case the Appellant has not credited or paid the said amount of RS. 40,98,585 to the doctors who are listed in the impugned notice and orders. As the Appellant is not governed by the said section, they are not liable to deduct Tax at Source.

The appellant relies on the following Decisions:

(2019] 104 taxrann.com 217 (Bombay) HIGH COURT OF BOMBAY Commissioner of Income-tax, TDS-2, Mumbai V.Saifee Hospital Trust

"Section 194J of the Income-tax Act, 1961 - Deduction of tax at source Fee for Professional or technical services (Hospitals, in case of) Assessment year 2011-12. In course of assessment, Assessing Officer opined that assessee was liable to deduct tax under section 194J in respect of payments made,

directly by patients to consultant, doctors working in hospital- Tribunal, however, found that there was no tangible evidence, and material on record, to show that any amount of fees was credited, in doctors' account or paid to doctor by assessee - Tribunal thus deleted disallowance made by Assessing Officer by invoking provisions of section 194J - Whether, on facts impugned order passed by Tribunal did not require any interference - Held, yes (Para 6) (In favour of assessee")

In view of the above, it can be concluded that there is no liability attached to the appellant to deduct Tax at source.

6.3. Interest under Section 201(1A):

As there is no liability to deduct tax under source, the demand for interest fails and is not sustainable

7. The appellant wish to be heard in person before the case is decided.

8. The appellant may be permitted to add new ground, delete or amend the existing submission either during the personal hearing or before the order is passed.

The appellant may also be permitted to furnish any additional documentary or other evidence, materials, records at the time of personal hearing or before order is passed."

3. The brief facts of the case are that, the appellant is engaged in the business of providing health care service. A TDS survey u/s. 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was carried out in the business premises of the assessee on 26.02.2014. During the course of survey, books containing details of amount paid to

visiting doctors were impounded. Based on the information available in the note books, it was noted that the assessee has paid to consulting doctors, however not deducted TDS as required u/s. 194J of the Act. The Assessing Officer, called upon the assessee to explain. In response, the assessee submitted that hospital employed a model, where consultant doctors come to the appellant hospital and provide service to patients and collect fees by themselves. Therefore, for amount collected by the doctors from the patients the assessee has not treated as its income and consequently, on payments made to consultant doctors, TDS has not been deducted. The Assessing Officer, after considering relevant details and also taken note of reply furnished by the assessee opined that, the assessee ought to have deducted TDS on payment made to consultant doctors as per the provisions of section 194J of the Act and thus, for non-deduction of TDS held assessee as an assessee in default and computed short deduction of TDS and interest thereon u/s. 201(1) & 201(1A) of the Act and computed tax payable at Rs. 7,58,239/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A),

the assessee contended that the appellant has provided space to the doctors to provide a platform for the doctors and patients, which helped the appellant to be known as single point for consulting doctors of various specialties. The doctors have directly collected fees from the patients. The details maintained by the assessee in note book is to keep record of the patients for further follow up. Since, no fees was paid by the appellant to the doctors, the question of deduction of TDS does not arise. The Id. CIT(A), after considering relevant submissions of the assessee opined that, as per the provisions of section 200 of the Act, where any person, including the Principal Officer of a company, who is required to deduct any sum in accordance with provisions of this Act, referred to in sub section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then such person, shall without prejudice to any other consequences, shall be deemed to be an assessee in default in respect of such tax and thus, since assessee has not deducted TDS for payment made to consultant doctors, the Assessing Officer, has rightly held assessee as the assessee in default and computed short collection of TDS and interest thereon u/s.

201(1) & 201(1A) of the Act. Thus, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards short computation of TDS and interest thereon. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Id. Counsel for the assessee submitted that, the Id. CIT(A) erred in sustaining additions made towards short collection of TDS and interest u/s. 201(1) & 201(1A) of the Act, in respect of payment made to consultant doctors without appreciating fact that the assessee neither collected fees from the patients nor credited or paid to doctors account in their books of accounts and thus, question of deduction of TDS u/s. 194J of the Act on payment made to consultant doctors does not arise. The Ld. Counsel for the assessee, referring to the decision of Hon'ble High Court of Bombay in the case of CIT vs Saifee Hospital Trust 104 Taxmann.com 217, submitted that when the patients directly made payment to doctors, then the assessee is not required to deduct TDS on such payments. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer.

6. The Id. DR, AR V Sreenivasan, Addl. CIT, submitted that as per the provisions of section 200, any person responsible for making payment referred to u/s. 194J, should deduct TDS at the time of making credit or payment to the account of the recipient. In this case, since the assessee has made payment to consultant doctors, it must have deducted TDS u/s. 194J of the Act. Since, the assessee does not deducted TDS on impugned payment, the Assessing Officer has rightly computed TDS and interest as per the provisions of section 201(1) & 201(1A) of the Act.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that a TDS survey u/s. 133A of the Act was carried out in the business premises of the assessee on 26.02.2014. During the course of survey, books containing details of amount paid to visiting doctors were impounded. The assessee has not deducted TDS on payment made to visiting doctors. The assessee claims that as per the model employed in their hospital, the appellant hospital provide platform for the doctors and the patients, but the amount of fees to be

collected is fixed by the doctors and directly collected by the doctors. The assessee further contended that, it has neither collected fees from the patients on behalf of the doctors nor credited or paid to the account of the doctors in their books of accounts. Unless the assessee makes the payment to doctors, the question of deduction of TDS u/s. 194J of the Act does not arise. We find that as per the provisions of section 194J of the Act, any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of specified therein, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof, whichever is earlier, deduct TDS at the applicable rate. It is clear from the provisions of section 194J of the Act that, the person responsible for making payment is required to deduct TDS. In the instant case, the appellant has not credited or paid such amount to the doctors. In fact there is no dispute with regard to the fact that doctors have directly collected fees from the patients and assessee neither collected nor credited or paid to the doctors accounts in their books of account. Since, assessee did not credited or paid to the doctors accounts, the question of deduction of TDS u/s. 194J of the Act on impugned payment does not arise and this legal

principal is supported by the decision of Hon'ble High Court of Bombay in the case of CIT vs Saifee Hospital Trust [2019] 262 Taxman 461 (Bom), where it has been clearly held that when the Assessing Officer fails to bring on record to show that any amount of fees was credited in doctors account or paid to doctors by assessee, impugned assessment order passed by the Assessing Officer was not sustainable. The ITAT, Delhi Benches in the case of ACIT vs Indraprastha Medical Corpn. Ltd [2009] 33 SOT 261 (Delhi), had considered an identical issue and held that when the Assessing Officer had failed to bring anything on record to show that the fees in question remained with the assessee hospital or that the doctors/consultant had provided their specialized services on behalf of the assessee hospital, there was no scope to treat the assessee as an assessee in default under the provisions of section 201(1) of the Act. In this case, there is no dispute with regard to the fact that the assessee has provided a platform for the doctors and patients, where the doctor provide service to patients and collect fees directly from the said patients. It was not a case of the Assessing Officer that the assessee has collected fees from the patients and credited to accounts of the doctors or paid to the account of the doctors

to invoke provisions of section 194J of the Act. Therefore, we are of the considered view that the Assessing Officer and CIT(A) are erred in treating assessee as an assessee in default u/s. 201(1) & 201(1A) of the Act. Thus, we direct the Assessing Officer to delete additions made towards short recovery of TDS and interest thereon u/s. 201(1) & 201(1A) of the Act.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 19th May, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 19th May, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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