आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 724/Chny/2023**
निर्धारण वर्ष / Assessment Year: 2014-15

Sri Kavery Medical Care (Trichy) Limited, No 1 2 &3 Kavery Medical Centre, Keelachatram Road, Tennur, Trichirapalli Dist 620 017. **[PAN: AABCK-8115-E]**	v.	ACIT, TDS Circle, Madurai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N. Arjun Raj, CA
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal. JCIT

सुनवाई की तारीख/Date of Hearing : 30.08.2023
घोषणा की तारीख/Date of Pronouncement : 30.08.2023

आदेश /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 24.04.2023 and pertains to assessment year 2014-15.

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

"1. The order of the NFAC, Delhi dated 24.04.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1052306669(1) for the

above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The NFAC erred in confirming the order passed u/s 201(1)/(lA) of the Act dated 16.03.2021 without assigning proper reasons and justification and ought to have appreciated that the order passed by the original authority on various facets was wrong, incorrect, invalid, unjustified, erroneous and not sustainable both on facts and in law.

3. The NFAC failed to appreciate that having not passed separate orders for the presumed applicability of section 201(1) and for the consequential levy of interest in terms of section 201(1A) of the Act, the sustenance of the said single order should be reckoned as bad in law.

4. The NF AC failed to appreciate that having not shared the survey report to the appellant, the conclusions reached in passing the order dated 16.03.2021 on various facets were wrong, incorrect, invalid, unjustified, erroneous and not sustainable both on facts and in law.

5. The NFAC failed to appreciate that the presumption of applicability of section l 94J of the Act in the hands of the appellant was wrong, incorrect invalid, unjustified, erroneous and not sustainable both on facts and in law and ought to have appreciated that the disputed fee was directly remitted by the patients to the doctors, thereby negating the applicability of section 194J of the Act in the hands of the appellant hospital.

6. The NFAC failed to appreciate that in any event the misreading of the provisions of section 201(1) of the Act would vitiate the recovery of the component in consequence to the presumed failure to deduct tax at source in terms of section 194J of the Act at 10% of the disputed sum tabulated in table A & B in para 6 of the impugned order and ought to have appreciated that in the absence of cross verification in the hands of the doctors and their returns of income filed, recovery of the said sum should be reckoned as bad in law.

7. The NFAC failed to appreciate that the levy of consequential interest u/s 201(1A) of the Act in such circumstances was wrong, incorrect, invalid, unjustified, erroneous and not sustainable both on facts and in law.

8. The NF AC failed to appreciate that the findings in para 8 of the impugned order were wrong, incorrect, invalid, unjustified, erroneous and not sustainable both on facts and in law.

9. The NFAC failed to appreciate that the order dated 16.03.2021 was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

10. The NF AC failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.

11. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

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. 9,45,700/-. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The ld. CIT(A), for the reasons stated in their appellate order dated 24.04.2023, dismissed appeal filed by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, Shri. N. Arjun Raj, CA, submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2013-14 in ITA No. 427/Chny/2022, where under identical set of facts held that,

the assessee is not liable to deduct TDS on professional fees directly collected by consultant Doctors and facilitated by the assessee.

5. The ld. DR, Shri. D. Hema Bhupal, JCIT, on the other hand submitted that, although the issue is covered in favour of the assessee by the order of the Tribunal for assessment year 2013-14, but fact remains that the Tribunal has allowed relief to the assessee by stating that the deductor hospital has only provided a platform for the doctors and the patients, where the doctors provide service to patients and collect fees directly from the said patients. However, facts collected during the course of search clearly establish that the deductor hospital has collected professional fees on behalf of the doctors and issued bills in the name of the hospital. Therefore, there is a difference in facts noticed by the Assessing Officer and appraised by the Tribunal and thus, this issue may be decided without any influence from the order passed by the Tribunal for earlier assessment years. Therefore, further submitted that the assessee is liable to deduct TDS on payment made to doctors and since, there is a failure to deduct TDS, the Assessing Officer has rightly held assessee as an assessee in

default u/s. 201(1) & 201(1A) of the Act and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Chennai Benches of ITAT in assessee's own case for assessment year 2013-14 in ITA No. 427/Chny/2022, where the Tribunal under identical set of facts and also in light of very same survey conducted u/s. 133A of the Act dated 26.02.2014, held 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, in respect of professional charges collected by the assessee on behalf of the doctors and paid without deduction of TDS u/s. 194J of the Act. The relevant findings of the Tribunal are as under:

> *"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."

7. In this view of the matter and by following the decision of the ITAT, Chennai Benches in assessee's own case in ITA No. 427/Chny/2022, we are of the considered view that the Assessing Officer and ld. CIT(A) are erred in treating the assessee as an assessee in default u/s. 201(1) & 201(1A) of the Act and thus, we direct the Assessing Officer to delete addition made towards short computation of TDS u/s. 201(1) and consequent interest u/s. 201(1A) of the Act.

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

Order pronounced in the court on 30th August, 2023 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गा राव)	**(मंजुनाथ. जी)**
(V. DURGA RAO)	**(MANJUNATHA. G)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 30th August, 2023
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

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