

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Anubhav Sharma, Judicial Member

ITA No. 1348/Del/2020 : Asstt. Year: 2008-09

Addl. CIT, Special Range-4, New Delhi	Vs	M/s Iffco Tokio General Insurance Company Ltd., Iffco Sadan, C-1, Distt. Centre, Saket, New Delhi-110017
(APPELLANT)		(RESPONDENT)
PAN No. AAACI7573H		

Assessee by : Sh. Baldev Raj, CA &

Ms. Sanju Kumari, CA

Revenue by : Ms. Monika Dhami, CIT-DR

Date of Hearing: 18.06.2024

Date of Pronouncement: 21.06.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A), Delhi-36 dated 12.02.2020.

2. Following grounds have been raised by the Revenue:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.43,07,68,034/- made on account of non-deduction of TDS on payments made by M/s. Iffco Tokio General Insurance Co. Ltd. to the TPA i.e. M/s Paramount Health services Pvt. Ltd. on account of professional services rendered."

3. The assessee is in the business of General Insurance, medical insurance and appointed a Third Party Administrative (TPA) for the management of claims received from the insured persons and to provide cashless medical facilities to the insured persons in the empanelled hospitals.

4. During the year, the assessee paid an amount of Rs.xxxxx to hospitals for cashless facilities and to the insured persons as reimbursement of the claims. All these payments were made to TPA without deducting any TDS.

5. The AO made addition an amount of Rs.xxxxx u/s 40(a)(ia) of the Income Tax Act, 1961 for defaulting the provisions of TDS on the payments made to TPA who in turn made various hospitals on behalf of the insured persons. The AO made the disallowance of the entire amount for failure to adhere to the provisions of Section 194J of the Act.

6. Aggrieved, the assessee filed appeal before the Id. CIT(A).

7. Before the Id. CIT(A), it was submitted that TPA settles the payment raised by the hospitals and in some case reimbursement the insurance claims to the policy holders from a separate account which is float account in which insurance company deposits certain amount which are made available to the TPA. As and when, the amount in the said claim float account diminishes which is replenished by the insurance company. It is the TPA who enters into MoU with various hospitals and nursing homes. The TPA gives undertaking to hospitals to reimburse and settle the bills of the policy holders.

8. Before the Id. CIT(A), the assessee enclosed copies of the certificates of Chartered Accountants obtained by TPA from the different hospitals to whom major amount has been paid without payment of TDS and submitted to Assessing Officer of TDS and prayed that in view of the certificate assessee has not be considered as an assessee in default and hence disallowance u/s 40(a)(ia) is not justified in law. During the appellate proceedings, the Id. AR of the appellant has submitted that as per section 194J the person who is responsible for paying to a resident any sum by way of fees for professional services is liable for deduction of TDS and that in the appellant's case TPA was the person responsible for making payments to hospitals and hence, it was the liability of TPA to deduct the TDS and not of insurance company as insurance companies did not make payment to hospitals.

9. The assessee has also submitted and relied upon clarification issued by CBDT in circular No. 8/2009 [F.No. 385/08/2009-IT(B)], dated 24.11.2009 wherein it has been clarified as under:

"3. For invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to Hospital. Therefore TPA who are making payment on behalf of insurance companies to hospitals for settlement of medical insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source u/s 194J on all such payments to hospitals etc.

3.1 In view of above, all such past transactions between TPA and hospitals fall within provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would

make the deductor (TPAs) deemed to be assessee in default in respect of such tax and also liable to charging interest under section 201(1A) and penalty under section 271C.

4. If the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee assessee (hospitals etc.). A certificate from the auditor of the deductee assessee stating that the tax and interest due from deductee- assessee has been-paid for the assessment year concerned would be sufficient compliance for the above purpose."

10. The assessee submitted that it is well settled that if a Circular issued by the department favours an assessee then it should be so done. The AR has relied upon the judgment by the Hon'ble High Court of Karnataka in the case of The Medi Assist India TPA Pvt. Ltd. vs. DCIT (TDS), Writ Petition No. 11376 of 2009, Decided on August 13, 2009, 184 Taxman 359 (Kar.), wherein it has been held that TPA is obliged to effect TDS u/s 194J of the ACT from the payments made to Hospitals.

11. The Hon'ble Delhi High Court while rejecting a writ petition filed by Vipul Medcorp TPA Pvt. Ltd. & Ors, held that payment made by Third Party Administrators (TPAs) to hospitals are in the nature of professional services covered under section 194J of the Income Tax Act, 1961 and accordingly, the, petitioner was under an obligation to withhold tax while making payments to hospitals.

12. Before the Id. CIT(A), the assessee has argued that the TPA is held as not an assessee in default and hence disallowance u/s 40(a)(ia) is not justified in law. The assessee has submitted that they have-enquired from the TPA about the compliance of the TDS on payments to Hospitals during the AY

2008-09 and that the TPA informed them that they have already made compliance of the TDS u/s 201(1) of the Income-Tax Act, 1961, during the proceedings they submitting CA certificates, ITR and necessary declarations from the Hospitals wherever was applicable/ required under section 201(1) and 40(a)(ia) of the Act.

13. The assessee submitted that the TPA, M/s Paramount Health Services Private Limited, has with all supportive documents and information, satisfied the officer in-charge of TDS that for A.Y. 2008-09 the respective income tax due on their returned income has been duly paid by the deductee assessee (hospitals) etc. The assessee has also submitted a copy of the Assessment Order passed u/s 154 of the Income Tax Act of the TPA M/s Paramount Health Services (TPA) Pvt. Ltd. before the Id. CIT(A). It was argued that the assessee not be held as in default once it has been proven that the deductee has paid due income tax on its income and hence, no tax liability arise u/s 201 when the deductee had paid the tax and further no disallowance can be made under Section 40(a)(ia). The assessee has also submitted copies of the certificates of Chartered Accountants obtained by TPA from the different Hospitals to whom amount was paid without payment of TDS and submitted to assessing office of TDS.

14. Before the Id. CIT(A), the assessee has submitted that the appellant (the insurance company) paid (reimbursed) amount to TPA for onward medical claims paid/ payable to the Hospitals or to the policy holders and also for service charges for their TPA services for which separate bills were raised by TPA and argued

that since amounts were paid towards reimbursement of expenditure incurred to be incurred by the payee (TPA) that did not come under the ambit of TDS provision and more over it does not form part of income in the hands of payee and therefore, no tax was deductible at source therefrom, under the provisions of Chapter XVII-B of the Act read with Section 4(2) of the Income Tax Act, 1961. It was submitted that the TDS on reimbursement was not applicable and the appellant was not able to deduct TDS. It was also submitted that during the year under consideration, the appellant (the Insurance Company) paid an amount of Rs.26,08,36,689/- towards Hospitals for cashless facility and Rs.16,99,31,345/- was paid towards insured persons as reimbursement of claims and all these payments were made through the TPA M/s Paramount Health Services Private Limited which totaled to Rs.43,07,68,034/- and that the appellant company paid service charges to the TPA for their services at the agreed amount and that on such cases the appellant has only deducted TDS u/s 194J on all the payments of service charges provided or paid to TPAs.

15. Having examined the facts, the Id. CIT(A) deleted the addition made by the AO.

16. Aggrieved, the assessee filed appeal before the Tribunal.

17. Before us, the Id. DR filed the arguments in writing which are as under:

"Regarding the grounds of appeal in this case, it is submitted that the assessee company is a general Insurance company, It provides cashless medi-claim facilities to its clients for medical services. It was engaged TPA's (Third party Administrators) as its

agents to process, examine and make payments to various Hospitals for services rendered by the Hospitals and other medical facilities.

2. During the year under consideration, it is found by the AO that the assessee company has made payments of Rs. 43,07,68,034/- to various Hospitals through TPA's on which TDS was neither deducted by the assessee company nor by its TPA's while making payments to the Hospitals. The AD after giving proper opportunity to the assessee made disallowance of Rs. 43,07,68,034/- u/s 40(a)(ia) for making payments in contravention to the provision to section 254) of the Act in order u/s 143(3) dated 19/12/2011.

3. The assessee company filed appeal before the CIT(A) Delhi-36, against the order of AO. The LOCIT(A) Delhi-36 in order dated 18/02/2016, gave relief to the assessee accepting the contention of the assessee company that the onus of deducting TDS on payments to Hospitals was an TPA's and a not on the assessee company and hence the expenses cannot the disallowed in the books of assessee company. Further the Ld.CIT(A) has also stated that The TPA's are merely Providing the professional services to the assessee company for which Service charges are paid by the assessee company on which TDS are duly deducted.

3.1 However, it is submitted that the assessee company in this case has made payments of 43,07,68,034/- which comprises of service charges claimed by the TPA's for their service and the reimbursement of payments made to the Hospitals/insured persons as the claim of medical expenses in the cashless payment facilities. Now, your Honours kind attention is drawn to FAQ No. 30 of CBDT circular No. 715 dated 08.08.1995, where the Board has issued clarification on the various provisions relating to tax deduction at source regarding changes introduced through finance Act 1995 (copy page 9 of the paper book of assessee) in answer to FAQ No. 30 the board has clearly and categorically, classified as under:

"Section 1940 and 1941 refer to any sum paid obviously, reimbursements cannot be deducted from the bill amount for the purpose of Tax deduction at source."

3.2. Here in the instant case the assessee company is deliberately deducting/reducing the reimbursement amount of expenses to avoid the TDS provisions and claiming service charges and reimbursement expenses separately. This is clearly in violation to the legislative Intent of the provision as clarified by the Board vide its answer to the FAQ No. 30 of the circular no. 715 dated 08.08.1995.

3.3 Your Honour, it is settled practices in accounting that where there is an agreement between principal and agents to provide certain services or execute certain work on behalf of the principal which includes payment of service charge viz-a-viz reimbursement of the expenses of certain nature. The payments are claimed on gross basis and TDS are deducted on entire payment which includes reimbursement of expenses as well. Example payment to civil contractor w/s 194C of the I. T. Act, payment to professional services such as Doctors, Architects, lawyers and CA etc. without prejudice to above, it is also submitted that despite of the fact that such claim of services charges includes certain element of reimbursements of expenses as well as further raising to separate bills by TPA's for services charges and others for reimbursement of expenses does not or cannot show or justifies that the assessee is making two separate payments. Unless the assessee shows that these payments are made through two separate cheques or bank transfer.

4. Further, the Assessee's claim in the last hearing that the case is covered by the judgment of the Hon'ble High Court of Karnataka in the case of Medi-Assist India TPA vs DCIT (TDS) Circle-18(1)(2009) 184 Taxman 359 [2010] is not accepted as the impugned case is relating to payment made by TPA to the Hospitals.

5. Hence, your Honours is requested to consider the merit in the case of Department and the order of AD may be upheld."

18. The Id. AR relied on the order of the Id. CIT(A).

19. We find that the submissions of the Id. DR at para 3.2 and 3.3 cannot be accepted as it is for the TPA to deduct the tax on the payments made but not on the assessee. The TPA has submitted the copies of the certificate of Chartered Accountant obtained by TPA from different hospitals to whom the amount was paid without payment of TDS and the circular of the CBDT No. 8/2009 clearly cast the onus of deducting of the tax on the TPA. We find that the Id. CIT(A), Smt. Mamta Kochar has diligently gone through the facts of the case, legal proposition and circular of the CBDT while deleting the addition and hence, we decline to interfere with the order of Id. CIT(A).

20. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 21/06/2024.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 21/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR