IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM
AND SONJOY SARMA, JM

ITA No.160, 161, 162 & 163/Coch/2025
Assessment Years: 2018-19, 2019-20, 2020-21 & 2021-22

Deputy Commissioner of Income Tax (TDS) ..... Appellant
Kochi.

vs.

Aster DM Healthcare Limited ..... Respondent
IX/475L, Aster Medcity Kuttisahib Road,
Near Kothad Bridge, South Chittoor
Cheranalloor, Kochi,
Kerala – 682027.
PAN: AACCD7912K

Appellant by: Shri R. Krishnan, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 11.06.2025
Date of Pronouncement: 15.07.2025

O R D E R

Per: Inturi Rama Rao, AM

The captioned appeals are filed by the Revenue directed against the orders of the Ld. Addl/Joint Commissioner of Income Tax (Appeals), Bengaluru, dated 24/12/2004, different orders for the AYs 2018-19, 2019-20, 2020-21and 2021-22.

2. Since the identical facts and issues are involved and the orders passed by the Addl/JCIT, Bengaluru, all these appeals are heard together and disposed of in this consolidated order.

3. For the sake of clarity and convenience, the facts relevant to the ITA No. 160/Coch/2025 (AY 2018-19) are stated herein under:

4. Briefly the facts of the case are that the respondent-assessee is a company engaged in the business of running a hospital in the name and style of Aster Medicity at Cheranallor, Kochi. The ACIT (TDS), Kochi conducted survey proceedings in the business premises of the respondent-assessee in order to verify the compliance with the TDS provisions. During the course of the survey proceedings, the TDS Officer found that the respondent-assessee had deducted tax at source in respect of the remuneration paid to Doctors U/s. 194J of the Income Tax Act, 1961 (in short "the Act") instead of 192 of the Act taking into consideration the terms of the Agreement entered into by the respondent-assessee company with the Doctors. The relevant terms of the agreement were extracted by the TDS Officer vide pages 3 & 4 of the order passed by him. The substance of the case of the TDS Officer is that the respondent-assessee company was paying fixed pay out to the consultant Doctors and also working as full time consultants and the variable pay to the Doctors was treated as incentive and also the Doctors were applying for leave of absence to the Chief of Medical Service or Head of Department and the respondent-assessee company had an administrative control over the Doctors as they are bound to follow the roles and responsibility regularly as framed

by the respondent-assessee company and most of the Doctors were exclusively working for the respondent-assessee company. Taking these facts into consideration, the TDS Officer concluded that the remuneration paid to the Doctors is in the nature of payment of salaries, accordingly the assessee company was called upon to show cause as to why the assessee company should not be declared as assessee in default for not deducting the tax at source U/s. 192 of the Act.

5. In response to the show cause notice, the respondent-assessee company filed a detailed explanation which is extracted by the TDS Officer at Page Nos. 6 to 14 of the order contending that the consultant Doctors were not the employees of the respondent-assessee company and there was no employer and employee relationship with the Doctors. For the sake of brevity, we are not extracting the submissions made. The sum and substance of the reply filed by the respondent-assessee company is that there was no employer - employee relationship. Rebutting the findings of the TDS Officer, reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of Manipal Health Systems Ltd vs. CIT (Karnataka) (2015) – ITA No. 747/2009 c/w ITA No. 746/2009; the judgment of the Hon'ble Gujarat High Court in the case of CIT (TDS) vs. Apollo Hospitals International Ltd (2013) 359 ITR 78 (Guj.) (HC) and judgment of the Hon'ble Bombay High Court in the case of CIT vs. Grant Medical Foundation (2015) 375 ITR 49 (Bom.). However, TDS Officer rejected the above explanation and proceeded to hold

that there exists employer - employee relationship between the respondent-assessee company and the Doctors by giving the following findings of facts:

"6.1. In the agreement entered by the deductor with the doctors there are terms and conditions as detailed below:

a. The deductor had fixed the roles and responsibilities including administrative & Medical duties to the doctors in the agreement entered with them in Schedule 1 Part A of the agreement.

b. The reporting authority for specialist doctors are employees of the deductor hospital viz., Chief Executive Officer (CEO) / Chief of Medical Services in Schedule 1 Part A of the agreement.

c. Even though no fixed timing is specified in the agreement the schedules of duties are prepared with the supervision of the deductor.

d. In the case of consultant doctors number 1.3,which states that "the Consultant shall be entitled to a share of revenue generated by the company by him/her in the manner as set forth in part B of Schedule 1 of the agreement" whereas in the case of the Specialist doctors clause number 1.3 states that "in consideration for the satisfactory fulfilment of the Role and Responsibilities, the specialist shall be entitled to a retainer fee. In the part B of the Schedule 1, the retainer fee is a consolidated amount.

e. For specialist doctors fixed retainer fees is paid per month. The payment is in the nature of consolidated payment mentioned in Part B of Schedule 1 of the agreement.

f.The doctors shall follow the practice of referring patients within deductor hospital for all procedures, cross consultation, investigations, diagnostics or treatments where the facility for the same exists within the hospital.

g. There is a termination clause No.3.2 which states that either party may terminate the agreement by giving 90 days notice in writing. However, the deductor shall be entitled to terminate this agreement

with immediate effect upon occurrence of an event of default. The default includes unauthorized absence from duty etc.

From the above terms and conditions, it is clear that the deductor is having control over the doctors. The aforesaid administrative control over the doctors in the agreement clearly indicates that there is employer – employee relationship with the doctors."

6. Accordingly, the TDS Officer treated the respondent-assessee company as an assessee in default for non-deduction of tax at source under the provisions of section 192 of the Act and raised a tax demand of Rs. 1,63,11,275/- and interest of Rs. 1,23,96,569/- U/s. 201(1A) of the Act for the AY 2017-18 vide order dated 19/01/2024.

7. Being aggrieved by the above order, an appeal was filed before the CIT(A), who vide the impugned order considering the terms of agreement for consultant Doctors proceeded to hold the respondent-assessee company is liable to deduct tax at source U/s. 194J of the Act and not U/s. 192 of the Act after making a reference to the judicial precedents relied upon by the respondent-assessee company.

8. Being aggrieved, the Revenue is in appeal before us in the present appeal.

9. The Ld. Sr. DR submits that the CIT(A) had grossly fell in error in holding that there is no relationship of employer – employee between the respondent-assessee and the Doctors inspite of the fact that the Doctors were paid fixed remuneration and they have to work under the control and management of the respondent-assessee company and they are working

exclusively for the respondent-assessee company and the reliance placed by the CIT(A) on the decisions have no application to the facts of the present case.

10. On the other hand, the Learned Authorized Representative of the assessee (in short "AR") submits that the remuneration paid to the Doctors is dependent upon the number of surgeries conducted, emergency cases attended to and the minimum remuneration was paid to ensure the continuity of the Doctors. Placing reliance on the decision of the Hon'ble Karnataka High Court in the case of Hosmat Hospital (P) Ltd vs. ACIT (2022) 440 ITR 149 (Karnataka), the AR submitted that no disallowance is called for.

11. We heard the rival submissions and perused the material available on record. The issue that arises for our consideration is whether the CIT(A) was justified in holding that there was no employer – employee relationship between the respondent-assessee company and the consultant Doctors accordingly in holding that the respondent-assessee company was liable to conduct tax at source only under the provisions of section 194J and not U/s. 192 of the Act. In order to decide this question, it is important to decide whether there exists relationship of employer – employee relationship between the respondent-assessee company and the consultant Doctors and the assessee company having regard to the terms of agreement entered into between the respondent-assessee company and the Doctors. To decide the relationship of employer – employee relationship, we have to examine whether the contract entered into between the parties is a "contract for

service" or "contract of service". The Hon'ble Karnataka High Court in the case of CIT vs. Manipal Health Systems (P.) Ltd, 375 ITR 509 (Kar.) has held as under:

> *"13. To decide the relationship of employer and employee we have to examine whether the contract entered into between the parties is a 'contract for service' or a 'contract of service'. There are multi-factor tests to decide this question. Independence test, control test, intention test are some of the tests normally adopted to distinguish between 'contract for service' and 'contract of service'. Finally, it depends on the provisions of the contract. Intention also plays a role in deciding the factor of contract. The intention of the parties can also determine or alter a contract from its original shape and status if both parties have mutual agreement. In the instant case, the terms of contract ipso facto proves that the contract between the assessee-Company and the doctors is of 'contract for service' not a 'contract of service'. The remuneration paid to the doctors depends on the treatment to the patients. If the number of patients is more, remuneration would be on a higher side or if no patients, no remuneration. The income of the doctors varies, depending on the patients and their treatment. All these factors establish that there is no relationship of employer and employee between the assessee-Company and the doctors.*
>
> *14. One such agreement referred to by the Tribunal i.e., para-7 of the agreement dated 12.09.2007 entered into between the Assessee Company and Dr.Isaac Mathew speaks in unequivocal terms that "This agreement is executed on a principal to principal basis notwithstanding the fact that the company may extend to the consultant certain benefits that are available to the employees. The consultant shall not be deemed to be an employee of the company".*
>
> *15. 'Consultancy charges' in the ordinary sense means providing of expert knowledge to a third party for a fee. It is a service provided by a professional advisor. These consultant Doctors are rendering professional services as and when they are called upon to attend the patients. Profession implies any vocation carried by an individual or a group of individuals requiring predominantly intellectual skill, depending on individual characteristic of person(s) pursuing with the vocation, requiring specialized and advance education or expertise. Consultancy charges are paid to the Doctors towards rendering their professional skill and expertise which are purely in the nature of professional charges. Assesssee Company has no control over the Doctors engaged by them with regard to treatment of patients.*

16. Mere providing of non-competition clause in the agreement shall not invalidate the nature of profession. It is common that the doctors are rendering their professional services as visiting doctors in different hospitals. Imposing a condition of bar to private practice is to make use of the expertise, skill of a doctor exclusively to the assessee-company i.e., to get the attention and focus of the professional skill and expertise only to the patients of the assessee-company and to discourage doctors from transferring patients to their own clinics or any other hospital. This condition imposed by the assessee-company would not alter the nature of professional service rendered by the doctors. Tribunal also held that none of the doctors are entitled to gratuity, PF, LTA and other terminal benefits. Considering all these aspects at length a detailed, well reasoned order is passed by the Tribunal on this issue which we may not find fault with.

17. It is also pertinent to note that the doctors have filed their return of income for the relevant assessment years showing the income received from the assesseee-Company as professional income and the same is said to have been accepted by the department.

This Court has held that the multi-factor tests would be available to examine whether the contract entered into between the parties is a "contract for service" or "contract of service". Finally, it depends on the provisions of the contract; intention also plays a role in deciding the factor of contract. Considering the contract between the assessee company therein and the Doctors, it was found that the income of the doctors varies, depending on the patients and their treatment. Thus, held, there was no relationship of employer and employee between the assessee-company and the doctors."

12. On a perusal of the order passed by the TDS Officer, it would reveal that the findings recorded to reach the conclusion that the Doctors were only the employees of the respondent-assessee company are that the fixed remuneration or fee for working under direct control and supervision of Hospital, clearly indicates that the facts present in the case of Manipal Health Systems(P) Ltd (supra) and the case decided by the Karnataka High Court in the case of Hosmat Hospital (P.) Ltd vs. ACIT (2022) 440 IGR 149 (Karnataka) are not same. However, the CIT(A) even after extracting the agreement entered into with the consultant Doctors and also the Roles and

Responsibilities of the Doctors and after citing the judgments concluded that the remuneration paid to Doctors does not partake the character of salaries but a professional fees. The CIT(A) had not examined the facts which are more material to decide whether there exists the employer – employee relationship, whether the Doctors were entitled for PF and ESI benefits, whether the Doctors were free to carry on their private practice at their own clinic or outside the respondent-assessee hospital and also failed to examine the facts and circumstances by looking into the conditions in terms of whether there exists master – servant or employer – employee relationship or not as it cannot be laid down as an absolute proposition. The CIT(A) passed a very cryptic order. Therefore, we are of the considered opinion that the matter requires remand to the file of the CIT(A)/NFAC with a direction to examine the terms of agreement entered into by the respondent-assessee company with the Doctors in order to find out the true nature of agreement, whether it is a “contract for service” or “contract of service” keeping in view the decision of the Hon'ble Karnataka High Court in the case of Manipal Health Systems(P) Ltd (supra) and the decision of the Hon'ble Karnataka High Court in the case of Hosmat Hospital (P.) Ltd vs. ACIT (supra).

13. In the result, appeal filed by the Revenue is partly allowed.

14. In respect of the Revenue’s appeals in ITA Nos. 161, 162 and 163/Coch/2025 for the AYs 2019-20, 2020-21 and 2021-22 respectively, since the facts and issues involved in these appeals are identical to that of the facts and issues in the Revenue’s appeal in ITA No. 160/Coch/2025 for the

AY 2018-19, which is adjudicated in the above paras of this order, our decision given therein mutatis mutandis applies to the Revenue's appeals for the AYs 2019-20, 2020-21 and 2021-22 also. Thus, the appeals of the Revenue in ITA Nos. 161, 162 and 163/Coch/2025 are partly allowed.

15. In the result, all the four appeals filed by the Revenue are partly allowed.

Order pronounced in the open court on 15th July, 2025.

Sd/-	Sd/-
(SONJOY SARMA)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 15th July, 2025

okk sps

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin