

No sec. 192 TDS on sums paid to consultant-doctors even if agreement prohibits them from taking other assignments

Summary – The High Court of Andhra Pradesh in a recent case of Yashoda Super Speciality Hospital, (the Assessee) held that payment made to consultant doctors who were engaged through an agreement, could not be treated as salary liable to TDS under section 192

Facts

- The assessee-company engaged doctors as a consultant through agreement and made payment to them.
- The Assessing officer treated said payment as a salary and made deduction under section 192.
- On appeal, both the Commissioner (Appeals) and the Tribunal deleted the deduction.
- On revenue's appeal to the High Court :

Held

- The Tribunal as well as the Commissioner (Appeals), on facts and on examining the agreement of engagement of the consultant doctors by the assessee, found that there is no relationship of employer and employee. After examining the agreement and various terms and conditions, it was found that the doctors are not administratively controlled or managed by the assessee and they are free to come at any point of time as far as their attendance is concerned and treat the patients. In the agreement, there is no provision for payment of any provident fund and gratuity. The only clause in the agreement is that the doctors cannot take up any other assignment.
- Both the authorities below observed that the existence of one prohibitory clause, as stated above, does not change the basic character of the relationship between the assessee and the doctors concerned. On fact, the Tribunal found that there is no employer and employee relationship and their payment cannot be treated to be salaries and, as such, deduction cannot be made under section 192.
- On the given facts, this court can only examine whether the law has been applied properly or not. On a careful reading of the impugned judgment and order, it is of the view that the law has been correctly applied. Therefore, appeal is dismissed