

Sum paid by Hospital for administration of drug store would attract sec. 194C TDS and not sec. 194H TDS

Summary – The High Court of Bombay in a recent case of Jaslok Hospital & Research Centre., (the Assessee) held that Where assessee-hospital engaged two ladies to facilitate and manage its drug store, drug handling charges paid to said ladies would be liable to deduction of tax at source under section 194C and not under section 194H

Facts

- The assessee-hospital had a pharmacy or drug store of its own. As it was finding it difficult to manage it by its own staff, it decided to manage it with the help of two ladies who were to ensure availability of the drugs and medicines for the patients getting treated in the hospital. To enable them to procure drugs and supply them to the drug store the payment was made by assessee to the manufacturers.
- During relevant assessment year, the assessee made certain payment to said two ladies as drug handling charges and deducted tax therefrom under section 194C.
- The Assessing Officer held that payment was in nature of brokerage and commission and, therefore, tax was to be deducted under section 194H.
- On appeal, the Commissioner (Appeals) as well as the Tribunal held that no commission or brokerage had been paid and, therefore, section 194H was not attracted.
- On revenue's appeal :

Held

- Section 194H is contemplating deduction of tax at source for payment to a resident, on or after 1-6-2001 of any income by way of commission (not being insurance commission referred to in section 194D) or brokerage. The words are defined in the Explanation and in a inclusive manner and that *inter alia* indicates any service in the course of buying or selling of goods. In the present case, the assessee has explained both before the Commissioner and the Tribunal that two ladies were in-charge of the drug store of the assessee. The assessee pointed out that they were brought in for administration and management of the drug store under the agreement. The Commissioner as also the Tribunal have noted the relevant clauses, reproduced them and construed the agreement as a whole. They have read the clauses of the same together and harmoniously. Upon such reading of the agreement, it was found that neither the Commissioner nor the Tribunal committed any error of law apparent on the face of record or perversity. The agreement reiterated that there is no principal and agent relationship. It is an independent management and administration job handed over to these ladies. To facilitate the administration and management by them of the drug store the hospital agreed with them that the payment would be made to the manufacturers or recognized and reputed agents of the manufacturers in procuring the drugs and medicines for drug store. That

would ensure that genuine drugs reach the drug store. That would also ensure regularity of supply. That would also ensure that the drugs of reputed manufacturers and procured by lawful means alone are available at the drug store. It is in these circumstances while not reading this particular arrangement torn from the context or in isolation that both the fact finding authorities held that no commission or brokerage has been paid and, therefore, section 194H is not attracted.