

Payment made by hospital to doctors would not attract sec. 192 in absence of employer-employee relationship

Summary – The High Court of Punjab & Haryana in a recent case of Ivy Health Life Sciences (P.) Ltd., (the Assessee) held that where assessee, running a hospital, availed services of some doctors, since there did not exist employer-employee relationship between parties, assessee was justified in deducting tax at source under section 194J while making payments of professional fee to doctors

Facts

- The assessee-company was running a hospital. It availed services of some doctors. The working days and hours of the doctors in OPD of the hospital were fixed as per contract between those doctors and the hospital. They were not allowed to do their own practice or work with another hospital during the period for which they were engaged with the hospital.
- The assessee company deducted tax under section 194J from the payments made to doctors treating the said payments as professional fees instead of salaries.
- The Assessing Officer concluded that there existed an employer and employee relationship between the assessee company and the doctors and thus tax should have been deducted under section 192 and not under section 194J. He accordingly created a demand for differential tax and also charged interest under section 201(1A).
- The Commissioner (Appeals) allowed assessee's appeal holding that the doctors enjoyed complete professional freedom; they defined working protocol; had free hand in treatment of patients and there was no control of the hospital by way of any direction to them on the treatment of patients. There existed no employer employee relationship.
- The Tribunal dismissed revenue's appeal.
- On revenue's appeal:

Held

- To resolve the controversy, it has to be seen whether the agreement between the assessee and the concerned doctors was a 'contract for service' or a 'contract of service'. In case, it is 'contract for service', the income of the doctors would fall under the head 'income from business or profession' whereas under 'contract of service', it would partake the character of salary which is dependent upon master-servant relationship. It is always a vexed question to determine whether employer-employee relationship exists between the parties or not. There is no strait jacket formula prescribed under any statute or by any pronouncement on the basis of which it could be said that in a given eventuality, it would be characterized as employer-employee relationship. It is dependent upon several factors taken together which would result into such relationship.
- In the present case, it has been categorically recorded by the Commissioner (Appeals) that the contract for service implies a contract whereby one party undertakes to render services *i.e.*

professional or technical services whereas contract of service implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and also as to its mode and manner of performance. The professional doctors were not entitled for LTC, concession in medical treatment of relatives, PF, leave encashment and retirement benefits like gratuity. They are required to follow some defined procedure to maintain uniformity in action and some administrative discipline but this did not mean that they had become employees of the hospital. Further, the department had not taxed the payments received by any of the doctors from the assessee under the head 'income from salary'. Concurring with the findings recorded by the Commissioner (Appeals), it has been held by the Tribunal that there does not exist employer-employee relationship between the assessee and the persons providing professional services.

- Thus, the Assessing Officer was not right in concluding on the combined reading of the various stipulations that the income of the doctors was salary. It nowhere suggests that there exists relationship of employer-employee between the assessee and the said doctors, rather it is a pointer to the contrary.
- The revenue has not been able to show any illegality or perversity in the findings recorded by the Commissioner (Appeals) as well as the Tribunal. In the result, impugned order of Tribunal is upheld. The appeals stand dismissed.