

HC directs ITAT to decide issue of 'contract of service' or 'contract for service' as per principles laid down by it

Summary – The High Court of Punjab & Haryana in a recent case of Suresh Kumar Hooda., (the Assessee) held that where assessee was engaged as a contractor on contractual basis by one 'S' and he disclosed receipts from 'S' as income from business or profession, whereas lower authorities treated said receipts as income from salary, matter required to be remanded to Tribunal to decide same afresh

Facts

- The assessee was engaged as a contractor on contractual basis by one 'S'.
- In the return filed for the assessment year 2006-07, he disclosed receipts on account of his technical service from 'S' as income from business or profession.
- The Assessing Officer treated the said receipts as income from salary.
- The Commissioner (Appeals) affirmed the order of the Assessing Officer holding that the said receipts were taxable as salary.
- The Tribunal upheld the order of the Commissioner (Appeals) and dismissed the appeal. On appeal to High Court:

Held

Submissions of assessee

- It is submitted by the assessee that whether the agreement between him and 'S' was a 'contract for service' or a 'contract of service' would be a question of fact dependent upon appreciation of various factors enunciated by the Punjab and Haryana High Court in the case of *CIT (TDS) v. Ivy Health Life Services (P.) Ltd.* [2015] 63 taxmann.com 362. The Tribunal has not recorded any such clear finding of fact regarding 'contract of service' or 'contract for service' between him and 'S'.

Principles of law

- The Punjab and Haryana High Court in *Ivy Health Life Services (P.) Ltd.'s* case (*supra*) held that it was required 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. Such relationship depends upon several factors taken together.

Conclusion

- In view of the aforesaid, the order passed by the Tribunal was liable to be set aside. The matter required to be remanded to it to decide the same afresh keeping in view the principles laid down by the Punjab and Haryana High Court in *Ivy Health Life Services (P.) Ltd.'s case (supra)*.