

## Sum paid to visiting doctors on basis of patients attended would attract sec. 194J TDS and not sec. 192 TDS

**Summary – The Bangalore ITAT in a recent case of Hosmat Hospital (P.) Ltd., (the Assessee) held that where working condition of in-house consultant doctors in a hospital were under supervision and control of hospital authorities and they were paid fixed remuneration, services rendered by such doctors was in nature of employee and, thus, TDS was to be deducted on remuneration under section 192**

**Where remuneration paid to a visiting doctor was variable with number of patients attended by him, payment to him would be subject to TDS under section 195J**

### Facts

- The assessee-company was engaged in the business of healthcare. It was employing three categories of doctors, viz., salaried doctors, in-house consultants and visiting consultants and it had been deducting tax at source in respect of in-house consultants and visiting consultants under the provisions of section 194J.
- The TDS officer found that the agreements entered into with salaried doctors also contained similar terms and conditions which governed the employment of consultant doctors. Therefore, he concluded that in-house consultants doctors were in fact salaried employees of the assessee-company and, thus, held the assessee-company in default for not deducting tax at source under section 192 and he charged interest under section 201(1A) apart from tax liability under section 201(1).
- On appeal, the Commissioner (Appeals) concluded that in-house consultant doctors were the employees of the assessee-company. However, in respect of visiting doctors, he held that professional fees paid to them was liable for deduction of tax at source only under the provision of section 194J.
- On cross appeals before the Tribunal:

### Held

#### *Issue of in-house consultant doctors*

- The issue to be adjudicated in the appeals of the assessee-company is whether there is a relationship of an employer and employee on construction of the terms of agreement entered by the assessee-company with consultant doctors.
- To decide the relationship of employer and employee, it is to be examined whether the contract entered between the parties is 'contract for service' or 'contract of service'.

- From the terms of contract entered by the assessee with consultant doctors it is clear that remuneration is fixed irrespective of number of patients attended by the consultant doctors. The timings are fixed. Said agreement also stipulates that consultant doctors are working with hospital for a minimum period of 5 years from the date of joining the organization. Further, it is submitted that in case consultant doctor leaves hospital within a period of 2 years and such doctor is barred from working in Bangalore District for a period of 2 years from the date of leaving. It is further submitted that in case consultant doctor shall not undertake any professional work or assignment in any other hospital without prior consent of the assessee-company. All these conditions go to prove that it is a case of contract of service. It is also clear from the agreement that there is no independence to the consultant doctors, their working hours and service conditions are under the direct control and superintendence of the assessee. All these circumstances go to prove that the assessee is only making an attempt to camouflage real nature of the transaction by using clever phraseology. It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive to determine the nature of transaction. The intention of the parties is to be ascertained with reference to terms of conditions contained in the agreement. From the terms of contract, it is very clear that the intention between parties is only a contract of service. Since consultant doctors were paid fixed remuneration and the working conditions are under supervision and control of the hospital authorities, services are rendered in the nature of employee. Hence, payments are subject to tax deduction at source under section 192. The assessee has failed to controvert the findings of the TDS officer that the terms and conditions of consultant doctors are same as that of salaried doctors. The fact that consultant doctors have declared their income under the head 'professional charges', has no bearing on the issue on hand. Accordingly, the assessee's appeals are dismissed.

***Issue of visiting doctors***

- The finding of the Commissioner (Appeals) is that remuneration paid to visiting doctors are subject to deduction only under the provisions of section 194J.
- The findings of the Commissioner (Appeals) are based on the fact that remuneration paid to visiting doctors is variable with number of patients attended by him. Thus there is no reason to interfere with the order of the Commissioner (Appeals).