

Payment made by TPAs to hospitals would attract sec. 194J TDS

Summary – The Mumbai ITAT in a recent case of United Healthcare India (P.) Ltd., (the Assessee) held that Payments made to hospitals by TPA that engages medical professionals are liable to TDS under section 194J

Where Commissioner (Appeals) had no where mentioned reason on basis of which he had concluded that penalty under section 271C was to be deleted, matter was to be remanded back

Facts

- The assessee-company was engaged in the business of providing health management services. It was a third party administrator (TPA) providing health insurance services.
- The Assessing Officer found that the assessee did not deduct tax at source, as the assessee-company paid certain amount to various hospitals on which no TDS was deducted. He held that assessee-company was liable to deduct tax as per the provisions of section 194J and imposed penalty under section 271C.
- On appeal, the Commissioner (Appeals), held that the payment made was liable for deduction of tax at source but deleted the penalty imposed by the Assessing Officer.
- On appeal before the Tribunal

Held

- The issue with regard to applicability of section 194J has already been decided by Bombay High Court in the case of *Dedicated Health Care Services TPA (India) (P.) Ltd. v. Asstt. CIT* [\[2010\] 324 ITR 345/191 Taxman 1](#) had held that the provision of medical services within the institutional framework would be rendered as part of an umbrella of services provided by the hospital which engages qualified medical professionals. These were services rendered in the course of the carrying on of the medical profession. Hence, TPAs, when they made payments to hospitals, were liable to deduct tax at source under the provisions of section 194J.
- By virtue of the law interpreted by the Bombay High Court, it is manifestly clear that the TPAs, while making the payments to hospitals are liable to deduct tax at source, under the provisions of section 194J. Therefore, as per the aforementioned law settled by the Bombay High Court the assessee was also liable to deduct tax at source, while making payments to hospitals under the provisions of section 194J. But the Commissioner (Appeals) while passing the impugned order has deleted the penalty.
- While deleting the penalty the Commissioner (Appeals) has mentioned that the penalty under section 271C was not leviable in the case of assessee for the reasons that the assessee did not

deduct tax following 'favourable decisions' available to them at 'that time'. According to which no tax was deductible by them for being TPA under section 194J. Therefore, the Commissioner (Appeals) while passing the impugned order has held that 'this being a reasonable cause itself, in view of provisions of section 273B' the penalty levied under section 271C, upon the assessee was deleted.

- The Commissioner (Appeals) has nowhere mentioned what were those favourable decisions at that time available to the assessee accordingly to which the assessee was not liable to deduct tax being TPA under section 194J and this particular stand taken by Commissioner (Appeals) is the basis for reaching to the conclusion. However, the orders passed by the Commissioner (Appeals) lacks mentioning or discussion of 'any such favourable decisions', while reaching to a conclusion regarding deletion of penalty. Therefore, the Commissioner (Appeals) has reached to a conclusion without mentioning its basis. Hence, the order of the Commissioner (Appeals) is non-speaking to that extent.
- Considering the facts of the present case, the present appeal is to be remanded back to the file of the Commissioner (Appeals) with a direction to pass speaking order, while mentioning the basis or the details of 'favourable decisions' which were available at 'that time' before the assessee, according to which no tax was deductible.