Payment made by hospital to consultant doctors would attract TDS under sec. 194J and not u/s 192

Summary – The High Court of Bombay in a recent case of Asian Heart Institute and Research Centre (P.) Ltd., (the Assessee) held that where in terms of agreement entered into between assessee-hospital and consultant doctors, those doctors were not entitled to benefits of leave encashment, gratuity, provident fund, superannuation benefits etc. it could be concluded that there did not exist an employer-employee relationship and, thus, assessee was required to deduct tax at source under section 194J while making payments to doctors

Facts

- The assessee, a trust, was running a hospital. While making payments to doctors, assessee was deducting tax at source under section 194J.
- The Assessing Officer opined that there existed an employer-employee relationship between assessee and doctors and, thus, tax was required to be deducted at source under section 192.
- The Tribunal, however, held that there did not exist employer-employee relationship between the assessee and full time consultant doctors and the payments made to them by the assessee came in the purview of section 194J. Accordingly, order passed by the Assessing Officer was set aside.
- On revenue's appeal:

Held

- The Court was influenced by certain factors which were presented on record such as engagement of the doctors for a fixed term under a contract, the fact that the assessee had no liability to pay provident fund or pension or such other post retiral benefits. It was also noted that the doctors were free to carry on their private practice in their own clinics outside the said hospital beyond the hospital time.
- In the present case, it has been recorded that the doctors were entitled to admit, investigate and provide treatment to the patients and that the doctors would be responsible for their clinical care. The doctors were responsible for supervising the subordinate staff whereas the facilities of the hospital staff, paramedical and nursing staff would be provided by the hospital along with the necessary equipment to render services to the patients. 15 per cent of the fee collected by the doctors would be deducted by the hospital as its share and the balance 85 per cent would be paid to the doctors after deduction of tax at source. In case of fees not being paid by patients, the same would be the liability of the concerned doctors. It was on this basis the Tribunal had come to the conclusion that the relationship between the hospital and the doctors cannot be treated as one of the employer-employee relationship. It was noted that the earnings of the doctors would be dependent upon the patients that the doctors would attract.

- The Tribunal has not committed any error. Significant features of the contractual relationship between the doctors and the hospital in the present case were that the hospital would provide support service where a particular patient would be treated by a doctor. The sharing was in the proportion of 15 per cent v. 85 per cent between the hospital and the doctors. Contractual tenure of these doctors was for a period of one year which would be renewable depending on the performance of the doctor to be assessed by the Medical Advisory Council of the hospital. These doctors were not entitled to benefits of leave encashment, gratuity, provident fund, superannuation benefits, etc. which regular employees of the hospital are. These doctors would on their own obtain indemnity insurance. These are clear indications that the relationship was not one of employer-employee.
- In view of aforesaid, impugned order passed by the Tribunal did not require any interference.