

Sharing sum received from patients with consultant doctors in fixed ratio was liable for sec. 194J TDS

Summary – The High Court of Bombay in a recent case of Asian Heart Institute and Research Centre (P.) Ltd., (the Assessee) held that where assessee trust, running a hospital, shared receipts from patients with consultant doctors in fixed ratio, TDS was to be deducted under section 194J as such payment was professional fees

Payment towards Annual Maintenance Contract in respect of various specialised hospital equipments by assessee hospital would not be in nature of fees for technical services within meaning of section 194J but would fall under section 194C as payment to contractor

Facts

- The assessee trust was running a hospital. It made deduction of tax at source under section 194J while making payments to the full time consultant doctors.
- The revenue contended that payments made by the assessee to Full Time consultant doctors would fall within the purview of section 192 instead of section 194J for the purpose of deductions of tax at source.
- The Tribunal held that there was no employer-employee relationship between the hospital and the doctors. Such payment was professional fees and, hence, liable to tax under section 194J.
- On the revenue's appeal to the High Court:

Held

- An identical issue came up for consideration in the case of revenue's appeal against this very assessee. While dismissing the revenue's appeal in this respect, it was held that the Tribunal examined the terms of engagement of the doctors by the assessee trust and came to a conclusion that the issues were squarely covered in favour of the assessee.
- Thus, 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 trust had no liability to pay provident fund or pension or such other post retiral benefits. It was also noted that these doctors were free to carry on their private practice in their own clinics outside the said hospital beyond the hospital time.
- 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 sub-ordinate 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.

- It was further held that the significant features of the contractual relationship between the doctors and the hospital 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. The 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 are 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.
- As a result, the appeal was to be dismissed.