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IN THE INCOME TAX APPELLATE TRIBUNAL 'C'
BENCH, CHENNAI

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BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

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वष / Assessment Year: 2015-16

Deputy Commissioner of Income tax, TDS Circle, Coimbatore.	M/s. Kovai Medical Centre and Hospital Limited, 99 Avinashi Road, Coimbatore - 641 014. [PAN: AAACK-9192-L]
(□□□□□□ /Appellant)	(यथ /Respondent)

□□□□□□ □ □□ □□/Appellant by : Shri. M. Rajan, CIT -DR

□□ □ □□ □□/Respondent by : Shri. Vikram Vijayaraghavan, Advocate

□□□□□□ □□ □□□□□/Date of Hearing : 28.03.2023 □□□□□ □□ □□□□□/Date of Pronouncement : 12.04.2023

□□□□ /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order of the Commissioner of Income tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 30.09.2022 and pertains to assessment year 2015-16.

2. The revenue has raised the following grounds of appeal:

"1. Whether the learned CIT(A) erred on facts and in law in allowing the appeal.

2. Whether the learned CIT(A) erred in holding that the Assessing Officer was not justified in treating the assessee as 'assessee in default' in terms of section 201(1)/20l(IA) of the Income-tax Act, 1961.

3. Whether the learned CIT(A) erred in holding that the relationship between the assessee-deductor and the doctors is not that of an employer and employee.

4. Whether the learned CIT(A) failed to appreciate that the relationship between the assessee-deductor and the doctors is that of 'employer and employee'.

5. Whether the learned CIT(A) failed to appreciate the fact that there is no material on record to show that the doctors in question have filed their returns of income admitting the amounts in question for the year under consideration.

6. Whether the Learned CIT(A) failed to appreciate the fact that AMC for medical equipments is fee for technical services.

Leave for adding / amending/ deleting the grounds during the hearing is sought."

3. The brief facts of the case are that the assessee company, M/s. Kovai Medical Centre and Hospital Limited is running a multispecialty hospital and providing health care service. In addition, the assessee company had branches for health care at City Centre Coimbatore, Erode, Sulur and Kovilpalayam. A survey u/s. 133A (2A) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was conducted on 22.11.2021 in the business premises of the assessee. During the course of survey, it was noticed that TDS has been deducted u/s. 194J of the Act, towards the remuneration paid to the consultant doctors. The survey team observed that there exists an employer and employee relationship between consultant doctors and the

appellant and thus, the assessee should have deducted TDS u/s. 192 of the Act for payment made to the consultant doctors. It was further noticed that the appellant had entered into various AMC contracts and TDS has been deducted u/s. 194C of the Act, as works contract on payment made to AMC contractor. No TCS was collected on the sale of scrap. Therefore, the survey team opined that services rendered by AMC providers are in the nature of fees for technical service and management services and the assessee should have deducted TDS as per the provisions of section 194J of the Act.

4. Consequent to survey, proceedings u/s. 201(1) & 201(1A) of the Act, was initiated for recovery of short deduction of TDS and consequent interest thereon. During the course of assessment proceedings, the AO called upon the assessee to furnish necessary details as to why payment made to consultant doctors cannot be subjected to TDS u/s.

192 of the Act. The AO had also called upon the assessee to explain as to why TDS has not been deducted u/s. 194J of the Act, for payment made to AMC Providers instead of TDS as per provisions of section 194C of the Act. In response, the assessee submitted that the company is operating a multispecialty hospital and in the process, it has appointed employee doctors for fixed salary basis with various terms and conditions as applicable to employees. The appellant had also engaged consultant doctors who come to hospital and render

professional services and collect fees as per tariff fixed by themselves. The assessee has deducted TDS u/s. 192 of the Act on salaries paid to employee doctors, whereas TDS has been deducted u/s. 194J of the Act to remuneration paid to consultant doctors. The assessee had negated observations made by the survey proceedings and argued that the survey team went on to record their findings on the basis of employee confidentiality agreement and revised guidelines for practice of medicine at KMCH, including on the basis of certain joining reports and observed that remuneration paid to consultant doctors is in the nature of salary which attracts provisions of section 192 of the Act, but fact remains that in order to consider payment made to consultant doctors within the provisions of section 192 of the Act, there should be an employer and employee relationship and further various laws and regulations applicable to employees are applicable to these consultant doctors. However, fact remains that these doctors are independent consultants, and can have their private practice outside KMCH and also not governed by various other laws applicable to employee. Therefore, it cannot be said that payment made to consultant doctors would be subjected to TDS u/s. 192 of the Act. The assessee had also negated observations with regard to the payment made to AMC providers and argued that agreement between assessee and AMC providers is a simpliciter works contract for providing various repair and maintenance services, but does not involve any kind of managerial and professional services to make TDS u/s. 194J of the Act. The assessee had also argued that TCS provisions is applicable only to manufacturing entities and

since the appellant is a service industry, believed that it is not liable to collect TCS on scrap sales.

5. The AO, after considering relevant submissions and also taken note of relevant evidences collected during the course of survey u/s. 132(2A) of the Act dated 22.11.2021, observed that the assessee has categorized consultant doctors as full time consultant, visiting consultant and special consultants. The full time consultants spent time in the premises of the appellant hospital for whole day in treating patients, visiting consultants are full time consultant stationed in base centre and visiting other centers of KMCH and vice-versa, and special category of consultants who are brought in by the existing doctors for such specialties that does not exists in KMCH. Therefore, the AO was of the opinion that the service conditions of consultant doctors are akin to employee doctors which govern timing, leave rules and other applicable laws. Therefore, any payment made to such consultant doctors would be in the nature of salary, on which TDS u/s. 192 of the Act should have been deducted. The Assessing Officer has discussed the issue at length in light of statement recorded from Mr. M.K. Ravindra Kumar, who is Chief Financial Officer of appellant company, joining reports of some doctors, appointment letters issued to some consultant doctors, to come to the conclusion that in joining report it was specifically recorded that they have been appointed

on fixed salary as applicable to employees. The AO had also discussed the issue in light of Employees confidentiality agreement, revised guidelines for practice of medicine at KMCH to come to the conclusion that they should not engage in private practice and further, they could avail leave with the permission of the Chairman of the hospital. The AO had also taken support from statement recorded from few consultant doctors u/s. 131 of the Act and observed that these doctors have been appointed by hospital of the appellant company, after conducting interviews, a monthly salary has been fixed by the Chairman. The doctors had submitted their joining report, fees were fixed and collected by the management. The Doctors bound by rules and regulations as stipulated in the revised guidelines. Therefore, the AO was of the opinion that payment made to consultant doctors is nothing but salary and thus, TDS as per provisions of section 192 of the Act should have been deducted. Since, the appellant has deducted TDS u/s. 194J of the Act, the AO has computed short deduction of TDS u/s. 201(1) and interest thereon u/s. 201(1A) of the Act, on payment made to consultant doctors and worked out short deduction of TDS at Rs. 7,02,87,806/- and interest thereon at

Rs. 6,63,75,371/- in all total of Rs. 13,66,63,177/-.

6. In so far as payment made to AMC providers towards maintenance of medical equipment, the assessee has made payment to various AMC providers and has deducted TDS @ 2% as applicable to works contractors in terms of provisions of section 194C of the Act. The AO, held that payment made to AMC providers is nothing but fees for technical services as defined u/s. 194J of the Act and on it, the assessee should have deducted TDS @10% but not 2% as applicable to works contract. Therefore, rejected arguments of the assessee and computed short deduction of TDS u/s. 201(1) of the Act at Rs.

40,71,233/- and interest thereon u/s. 201(1A) of the Act at Rs. 34,91,836/- in all total of Rs. 74,91,069/-. The AO had also computed short deduction of TCS @ 1% on total scrap sales and computed on TCS at Rs. 21,635/- and interest

thereon at Rs. 18,173/- in all total of Rs. 39,808/-.

7. Being aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee has filed detailed written submissions on the issue in light of certain judicial precedence and argued that in health care industry, a unique model is employed by all hospitals, where two types of doctors are employed. The first category of doctors are employee doctors who are governed by various laws and regulations as applicable to employees and second category of doctors are

consultant doctors who come and work in hospitals, but they are independent in respect of their timing, private practice and charging fees to patients. The survey team and AO misunderstood the model employed by the appellant company and has computed TDS u/s. 192 of the Act towards remuneration paid to consultant doctors on the wrong premises that they are also employees of appellant company and they are governed by various rules and regulations. But fact remains that, the survey team and AO considered incorrect evidence to arrive at the conclusion that the doctors employed in the hospitals are governed by Employees confidentiality agreement and revised guidelines for practice of medicine at KMCH. The assessee had also supported their arguments in light of certain judicial precedence and submitted that an identical issue had been considered by various courts and held that in order to treat consultant doctors as employees there should exists an employee and employer relationship. In this case, although those doctors have been appointed, but they have been paid remuneration like in any other professions who render professional services. Further, they are not governed by any laws and regulations which are applicable to employees. The AO, without appreciating relevant facts simply held that remuneration paid to consultant doctors is nothing but salary and TDS u/s. 192 of the Act should have been deducted. The assessee had also challenged short computation of TDS and interest thereon towards AMC charges paid to

various AMC providers and argued that, said payment is nothing but contract payment and comes under the provisions of section

194C of the Act and thus, question of deduction of TDS u/s.

194J of the Act does not arise.

8. The ld. CIT(A), after considering relevant submissions of the assessee and also taken note of various facts observed that, payment made to consultant doctors does not come under the provisions of section 192 of the Act, because a crucial and critical criteria for determination of employer and employee relationship is a contract of services is by the fact that the work related mandatory laws, such as provident fund, ESI, gratuity, attendance, leave encashment, LTA, bonus, superannuation etc are not applicable for the consultant doctors. The ld. CIT(A), observed that from the terms and conditions as GFP at point V, it is apparent that the doctors working at KMCH are permitted to do private practice albeit subject to certain conditions. The appearance of such Clause in GFP is a clear indication of the independence of doctor thereby the absence of Employer-employee relationship. The CIT(A), further observed that para 2.13 of the order, the AO observed that the consultant doctors governed by working hours, leave and fees has been fixed by the KMCH and also they are barred from private practice, but fact remains that the selection policy of any

professions by any company would definitely involve the assessment of credentials, skill and knowledge of that professional by way of conducting interview. Similarly, the specified working hours and leave rules appears to be more for the purpose of ensuring the presence of the doctors in the hospital for a particular time period to attend the patients. The manner of fees fixation as appearing in point VI clause 6 of GFP, and of private practice as appearing in point V of GFP are more indicative towards the independence of consultant doctors rather than other way around. The consultant doctor working at appellant hospital have covered themselves for professional indemnity by way of an insurance policy at their own cost. From the above, it is very clear that there is an absence of employer-employee relationship and thus, remuneration paid to consultant doctors cannot be treated as salary for the purpose of TDS u/s. 192 of the Act.

9. The Ld. CIT(A) had also discussed the issue in light of certain judicial precedents, including the decision of Hon'ble

Bombay High Court in the case of CIT(TDS-1) Mumbai vs Asian Heart and Institute Research Center Private Limited, to come to a conclusion that consultant doctors are not employees of hospital, because there was no employer and employee relationship between the hospital and the doctors. Therefore, the CIT(A), opined that the AO is erred in treating remuneration paid to consultant

doctors as salary for the purpose of provisions of section 192 of the Act and thus, directed the AO to delete additions made towards short deduction of TDS u/s. 201(1) and interest thereon u/s. 201(1A) of the Act. In so far as TCS on AMC charges paid to various AMC providers, the CIT(A) by following the decision of

Hon'ble Bombay High Court in the case of CIT vs Grant Medical

Foundation reported in 375 ITR 49, observed that Annual Maintenance Contract in respect of various specialized hospital equipment's is not in the nature of fees for technical services, hence, deduction of tax at source as contractor is held to proper. Therefore, the CIT(A) directed the AO to delete additions made towards short deduction of TDS u/s. 201(1) of the Act and interest thereon u/s. 201(1A) of the Act. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

10. The ld. CIT-DR, Shri. M. Rajan, referring to assessment order passed by the AO submitted that the ld. CIT(A) erred in holding that payment made to consultant doctors does not come under the definition of salary and consequently, TDS u/s. 192 of the Act does not apply on said payments. The ld. DR, further referring to various observations of the AO in light of relevant facts found during the course of survey submitted that the ld. CIT(A) erred in appreciating the relationship between the assessee and the doctors is that of employer and employee relationship. Further, the service conditions and remuneration paid to said doctors is akin to

employee doctors and thus, the assessee should have deducted TDS u/s. 192 of the Act. The ld. DR, on the issue of short deduction of TDS on AMC charges submitted that AMC contract for specialized medical equipment required specialized skill and knowledge which includes technical knowledge. Therefore, any payment made to said contractor is nothing but fees for technical services, which attracts provisions of section 194J of the Act. The ld. CIT(A), without appreciating relevant facts simply held that AMC contract is nothing but works contract and assessee has rightly deducted TDS u/s. 194C of the Act.

11. The ld. Counsel for the assessee, on the other hand supporting the order of the ld. CIT(A) submitted that the appellant is following a unique model where two kinds of doctors have been employed in the hospital. The appellant appointed employee doctors who are governed by various laws including leave, bonus, superannuation benefits etc. Whereas, the consultant doctors are employed for fixed monthly remuneration without any benefits like leave, bonus, leave encashment, superannuation etc. The assessee has deducted TDS on payment made to doctors u/s. 194J of the Act, wherever, those doctors are appointed as consultant doctors, but when it comes to employee doctors TDS has been rightly deducted u/s. 192 of the Act. The AO scanned employees confidential report of a Dean employed in the medical college who is governed by various laws

applicable to employees and applied said report to all doctors who have been appointed as consultant doctors. The assessee has clarified the said mistake committed by the AO before the CIT(A) and the ld. CIT(A), after considering relevant facts has rightly held that remuneration paid to consultant doctors does not come under provisions of section 192 of the Act. The ld. Counsel for the assessee, referring to the order of the Hon'ble Madras High

Court in the case of Dr Mathew Cherian and other in WP 12692

& 14810 of 2022 etc dated 01.09.2022, submitted that the Department has reopened assessment of various doctors who was employed as consultant doctors in appellant hospital and said doctors challenged notice issued u/s. 148A(d) of the Act, before the Hon'ble High Court of Madras in Writ Jurisdiction and the Hon'ble High Court by considering very same survey conducted in appellant hospital u/s. 133A(2A) on 22.11.2021, and after considering relevant facts held that if you go by terms and conditions of appointment of consultant doctors, it is nothing but a professional service, but not salary as applicable to employees. The Hon'ble Court has discussed the issue in light of various facts and also by following certain judicial precedents held that those doctors appointed as consultant doctors have been paid fixed monthly remuneration with variable component depending on the number of patients treated. Further, doctors are not entitled for any statutory benefits and also points to the absence of an employer

and employee relationship. Therefore, the Hon'ble Madras High Court came to the conclusion that payment made to consultant doctors is nothing but professional charges. In this regard, he relied upon various judicial precedents including the decision of

Hon'ble Supreme Court in the case of Sushilaben Indravan Gandhi and anor vs New India Assuance Co Ltd in Civil Appeal no. 2235 of 2020 dated 15th April, 2020.

12. In so far as TDS on AMC charges, the ld. Counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of CIT vs Grant Medical Foundation (Supra), where the issue has been decided as per which AMC charges paid for maintenance of specialized medical equipment is a simpliciter works contract and TDS u/s. 194C is applicable. The ld. CIT(A), after considering relevant facts has rightly deleted additions made by the AO and their order should be upheld.

13. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The sole basis for the Assessing Officer to compute short deduction of TDS u/s. 201(1) and interest thereon u/s.

201(1A) of the Act is survey conducted u/s. 133A(2A) of the Act on 22.11.2021, in the business premises of the appellant company. During the course of survey, on the basis of certain evidences including joining report, appointment letter, employees confidentiality agreement and revised guidelines for practice of medicine at KMCH, the AO opined that the payment made to consultant doctors is akin to salary, on which the appellant should have deducted TDS u/s. 192 of the Act. The AO has discussed the issue at length and came to the conclusion that consultant doctors works throughout the day in the appellant hospital, they are governed by leave rules and also fees is fixed by the management. The AO further observed that consultant doctors are not allowed to have their private practice outside appellant hospital. The AO had also discussed issue in light of selection process of consultant doctors and working hours, their leave policy and increment provided to said doctors to come to the conclusion that all terms of conditions also points to the fact that there is an employee and employers relationship between consultant doctors and appellant company.

14. We have given our thoughtful consideration to the reasons given by the Assessing Officer in light to various arguments of the ld. Counsel for the assessee and we ourselves do not subscribe to reasons given by the AO, for the simple reason that in health care industry a unique model is employed by various hospitals in employing doctors. As per the model followed by the assessee, the assessee employed two types of doctors.

The first kind of doctors are employee doctors, who are governed by various laws applicable to employees including bonus laws, leave rules, superannuation laws etc. The appellant has deducted TDS u/s. 192 of the Act on payment made to employee doctors and on this issue there is no dispute from the revenue. The second category of doctors employed by the appellant company is consultant doctors and said consultant doctors has been classified by full time consultant doctors, visiting consultant and special category of consultants. The full time consultant doctors are working for specified hours. Further, visiting consultant doctors stationed in base centre and visiting other centers of KMCH and vice-versa. Special category of consultants, who are brought in by the existing doctors for such specialties that does not exist in KMCH or when there are no doctors available to treat a particular disease or health complication. All these doctors were appointed on a certain terms and conditions as per which full time consultants needs to work for specified hours, but other rules and regulations applicable to employee doctors like leave rules, superannuation rules etc does not applicable to these doctors. Visiting consultants would visit for a specialized diagnosis as per the request of the hospital, but they do not stay in the hospital throughout the day. In case of special category of doctors, the question of staying them in hospital does not arise, because they have been called as and when requirement arises. From the above, it is very clear that although all those

consultant doctors including three types of doctors are a professionals, who are governed by their professional laws registered under various medical counsels by respective State/Central laws. Although, these doctors have been paid fixed remuneration per month, along with variable pay depending upon their performance, but said payment cannot be considered as salary because there is absence of employer and employee relationship between these consultant doctors and appellant company. A very crucial and critical criteria for determination of employer and employee relationship in a contract of service, is the work related mandatory laws, such as provident fund, ESI, gratuity, attendance, leave encashment, LTA, bonus, superannuation etc and said laws are not applicable for the consultant doctors, whereas an employee is governed by all these laws. Therefore, to distinguish an employee and consultant these parameters are very important and crucial. In this case, there is no dispute with regard to the fact that all these laws are not applicable to consultant doctors, whereas these laws are applicable to employee doctors. In fact, the AO himself admitted the fact that these laws are not applicable to consultant doctors. Therefore, in absence of any employer and employee relationship, the remuneration paid to consultant doctors cannot be treated as salary and provisions of section 192 of the Act cannot be applied.

15. Coming back to various observations of Assessing

Officer, in light of revised guidelines for practice of medicine at KMCH and Employee confidentiality agreement. As per terms and conditions of GFP at point 5, it is apparent that the doctors working at appellant hospital are permitted to do private practice albeit subject to certain conditions. The appearance of such Clause in GFP is a clear indication of the independence of doctors thereby the absence of employer and employee relationship. Further, under Para 2.13 of the order, the AO has discussed the issue in light of certain Clause of GFP at KMCH and argued that these doctors have been appointed by the Chairman and they are governed by working hours, leave rules and also fees for treatment of patients has been fixed by the hospital. They are also governed by incremental pay. We have gone through certain Clause of GFP of KMCH and we find that the conditions of leave is to simply specify that they can avail leave with the previous permission of the hospital authorities, but, it does not say that the appellant is governed by applicable leave laws and rules and is entitled for EL encashment etc. In so far as working hours is concerned, the hospital has put a condition on working hours to make sure that those doctors are available in the hospital for the benefit of patients. However, it does not mean that those doctors are governed by laws applicable to employees. Similarly, the clause further says that fees to be collected from patients for various consultation is decided by the management. However, a very same agreement clearly says that the doctors are independent and they can decide their fees structure depending upon the type of

treatment given to the patients. Therefore, we are of the considered view that simply for the reason that certain conditions are imposed while employing these consultant doctors, it cannot be said that those doctors are employees of the appellant company, unless the Assessing Officer proves that these doctors are employees of appellant company, and governed by various laws applicable to employees. Further, specified working hours and leave rules appears to be more for the purpose of ensuring the presence of the doctors in the hospital for a time period to attend the patients and in case a consultant doctor wish to avail leave, then the rule of prior permission will facilitate to make alternate arrangement for the smooth functioning of hospital. Therefore, on that basis alone, it cannot be concluded that there exists a employer and employee relationship. Further, the doctors are independent and also proved by the fact that many doctors working at KMCH had covered themselves for professional indemnity by way of an insurance policy at their own cost. Similarly, Clause 6 of revised guidelines for practice of medicine at KMCH also specifies the responsibility of doctor to decide cross consultation fee, which an important indication towards the independence of doctors.

16. In so far as observations of the AO, in light of joining report of Dr. Vijay, we find that no doubt in hand written it was written as ‘salary’, however, the appellant has clarified that the HR department of appellant hospital after discussing with consultant doctors fixed remuneration and sent for

approval of the Chairman and at this stage by mistake it has been written as ‘salary’. Therefore, on this basis alone it cannot be said that it is a salary and there is an employer and employee relationship. Further, it is also noted that the AO has conveniently ignored the other columns in the said joining report, where it has been clearly mentioned that ‘Consultant critical care medicine’ and from the above it is very clear that said doctor is a consultant, but not an employee. In so far as Employees Confidentiality Agreement considered by Assessing Officer in Page 6 to 8 of his order, the Counsel for the assessee clarifies that report pertains to Dr. V Kumaran, who is the Dean of the hospital and employed as an employee. From the above, it is very clear that the AO grossly misunderstood the model employed by the assessee for employing employee doctors and consultant doctors and took one sample report of an employee doctor and observed that even consultant doctors are governed by said report. But, fact remains that as per details filed by the assessee, consultant doctors are not governed by said rules and are independent. Therefore, we are of the considered view that the AO is completely erred in coming to the conclusion that there is an employer and employee relationship between consultant doctors and appellant company and remuneration paid to said doctors is salary which attracts provisions of section 192 of the

Act.

17. At this stage, it is relevant to consider the following case laws cited by the ld. Counsel for the assessee. The ld. Counsel for the assessee has taken support from the order of Hon'ble High Court of Madras in Writ Petition no. 12692 and others dated 01.09.2022. We find that the department has reopened assessment of various doctors on the basis of survey conducted in the business premises of appellant and said doctors challenged 148 notice issued by the AO in Writ jurisdiction. The Hon'ble High Court has examined the facts of the show cause notice in light of various averments of the parties and observed that in order to treat remuneration paid to consultant doctors under the head salary, there should be employer and employee relationship. But, in the present case there is absence of employer and employee relationship. Therefore, opined that the department does not have individual materials to reassess the income of consultant doctors.

18. The assessee had also relied upon the decision of Hon'ble

Karnataka High Court in the case of CIT vs Manipal Health Systems P Ltd [2015] 375 ITR 509 (kar). The Hon'ble High Court has considered a similar issue in light of survey conducted and assessment order passed u/s. 201(1) and 201(1A) of the Act, and after considering relevant facts held that mere providing

of non-competition clause in agreement should not invalidate nature of profession. The relevant facts of the High Court are held as under:

> "13. the terms of contract ipso facto proves that the contract between the assessee-Company and the doctors is of 'contract for service' not a 'contract of service'. The remuneration paid to the doctors depends on the treatment to the patients. If the number of patients is more, remuneration would be on a higher side or if no patients, no remuneration. The income of the doctors varies, depending on the patients and their treatment. All these factors establish that there is no relationship of employer and employee between the assessee- Company and the doctors.
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> 14. One such agreement referred to by the Tribunal i.e., para7 of the agreement dated 12.09.2007 entered into between the Assessee Company and Dr.Isaac Mathew speaks in unequivocal terms that "This agreement is executed on a principal to principal basis notwithstanding the fact that the company may extend to the consultant certain benefits that are available to the employees. The consultant shall not be deemed to be an employee of the company".
>
> 15. 'Consultancy charges' in the ordinary sense means providing of expert knowledge to a third party for a fee. It is a service provided by a professional advisor. These consultant Doctors are rendering professional services as and when they are called upon to attend the patients. Profession implies any vocation carried by an individual or a group of individuals requiring predominantly intellectual skill, depending on individual characteristic of person(s) pursuing with the vocation, requiring specialized and advance education or expertise. Consultancy charges are paid to the Doctors towards rendering their professional skill and expertise which are purely in the nature of professional charges. Assesssee Company has no control over the Doctors engaged by them with regard to treatment of patients.
>
> 16. Mere providing of non-competition clause in the agreement shall not invalidate the nature of profession. It is common that the doctors are rendering their professional services as visiting doctors in different hospitals. Imposing a condition of bar to private practice is to make use of the expertise, skill of a doctor exclusively to the assessee-company i.e., to get the attention and focus of the professional skill and expertise only to the patients of the assessee-company and to discourage doctors from transferring patients to their own clinics or any other hospital. This condition imposed by the assesseecompany would not alter the nature of professional service rendered by the doctors. Tribunal also held that none of the doctors are entitled to gratuity, PF, LTA and other terminal benefits. Considering all these aspects at length a detailed, well reasoned order is passed by the Tribunal on this issue which we may not find fault with.

17. It is also pertinent to note that the doctors have filed their return of income for the relevant assessment years showing the income received from the assesseee-Company as professional income and the same is said to have been accepted by the department.

18. High Court of Gujarat, in the case of CIT (TDS) vs APOLLO HOSPITALS INTERNATIONAL LTD. reported in (2013 (359) ITR 78) (Gujarat) has taken a similar view that the consultant doctors were not getting salary, but the payment to them was in the nature of professional fees liable to deduction under Section 194G and Section 192 of the Act had no application.

19. We are in agreement with the findings of the Tribunal on this issue. Accordingly, we answer the first substantial question of law in favour of the assessee and against the revenue."

19. The appellant had also relied upon the decision of Hon'ble Bombay High Court in the case of CIT (TDS-1) Mumbai vs Asian Heart and Institute Center Private Limited, (Supra) wherein the Hon'ble High Court held as under:

" Question No (ii) arises out of the revenue's contention that the Respondent Trust, running a hospital, while availing the services of doctors, had entered into employer-employee relationship, and therefore, deduction of tax at Source while making payments to the doctors had to be on the basis that the same was the salary paid by the employer to the employee. The Tribunal held that there was no employeremployee relationship between the hospital and the doctors."

The Hon'ble High Court decided the above issue against the Revenue and has made extensive reference to the judgment of the Division Bench of Bombay High Court in the case of CIT v/s. Grant Medical Foundation reported in 375 ITR 049. In CIT v/s. Grant Medical Foundation, the Division Bench of Hon'ble

Bombay High Court examined at length the issue as to when the engagement of the services of the doctors can be seen to be in the nature of employment. In this case also the Hon'ble High Court held the relationship between Professional Doctor

consultant and the Hospital cannot be treated

as Employer Employee relationship, unless there exist the specific Rules and Provisions in the contract of appointment between the consultant and Hospital.

20. Similar decisions have been delivered by deciding the issues against the Revenue by the Hon'ble High Court of Gujarat in CIT Vs. Apollo Hospitals International Ltd., [2013]

359 ITR 78 (Guj), and the Hon'ble High Court of Andhra

Pradesh in the casse of CIT (TDS) Vs. Yashoda Super Specialty

Hospital [2014] 365 ITR 356 (AP).

21. In this view of the matter and considering facts and circumstances of this case and also by following the case laws discussed herein above, we are of the considered view that there is no error in the reasons given by the CIT(A) to

delete additions made towards short deduction of TDS u/s. 201(1) and interest thereon u/s. 201(1A) of the Act in respect of payment made to consultant doctors. Thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

22. The next issue that came up for our consideration from revenue appeal is deletion of short deduction of TDS and interest thereon in respect of payment to annual maintenance charges for maintenance of medical equipment u/s. 194J of the Act, as against 194C of the Act applied by the appellant.

23. Having heard both the sides and considered relevant materials available on record, we find that AMC charges paid by the appellant to various contractors is a simpliciter works contract charges paid for repair and maintenance of medical equipment, which cannot be considered as fees for technical services as defined u/s. 194J of the Act, because said services does not parse required specialized technical knowledge. Further, this issue is also covered in favour of assessee by the decision of the Hon'ble Bombay High Court in the case of CIT vs Grant Medical Foundation (Supra), where it has been clearly held that annual maintenance contract in respect of various specialized hospital equipment is not be in nature of fees for technical services. Hence, deduction of tax at source as contractor is held to be proper. Similar view has been taken by the Hon'ble

Bombay High Court in other case of CIT vs M/s. Saifee Hospital reported in 262 Taxman 343 (Bom), wherein the Hon'ble High Court held that payment for services rendered towards maintenance of medical equipment, is payment for work contract covered u/s. 194C of the Act and the same does not involve any technical service, which would require deduction of tax at source u/s. 194J of the Act. The CBDT Circular No. 715 dated 08.08.1995, has also clarified the applicability of TDS provisions in respect of payment made to AMC provider by way of question no. 29 and answered that routine, normal maintenance contract which includes supply of spares will be covered u/s. 194C of the Act. From the above, it is very clear that there is no error in the reasons given by the CIT(A) to delete additions made towards short deduction of TDS on payment made to AMC charges u/s. 201(1) and interest thereon u/s. 201(1A) of the Act and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject grounds taken by the revenue.

23. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 12th April, 2023 at Chennai.

Sd/-	Sd/-
(□□□□□□ □□□□)	(□□□□□□□□. □□)
(MAHAVIR SINGH)	(MANJUNATHA. G)
□□ /Vice President	□□□□□□ /Accountant Member

□□ ई /Chennai,

□□□□□/Dated: 12th April, 2023 JPV □□□□

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1. □□□□□□ /Appellant 2. □ /Respondent 3. □□□□ □□□ (□□□□)/CIT(A)

4. □□□□ □□□ /CIT 5. □□□□□□□ □□□□□□/DR 6. □□□ □□□□/GF