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Tax alert: Consultant doctors working for hospital are not employees

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The Bombay High Court (HC) has held that payments to consultant doctors, come under the purview of section 194J of the Income-tax Act 1961 (ITA) as professionals and not as employees under section 192 of the ITA, as there did not exist an employer-employee relationship.

In a nutshell

The doctors were appointed on probation, based on their qualification and expertise in the area of their specialization. They did not receive any fixed monthly remuneration; their payment depended upon the work they did.

No Provident Fund (PF) or Employees' State Insurance Corporation (ESIC) facilities were extended to these consultant doctors, and neither were any perquisites given to them. These doctors attended their duties on the basis of the needs of the patients and they were not bound by any fixed schedule for attending the

The hospital did not exercise any real supervisory control in respect of the work entrusted to the doctors.

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Background:

- The taxpayer[1] is a Trust, engaged in the business of running a hospital.
- Based on a survey conducted by the income-tax authorities [under section 133A of the Income-tax Act 1961 (ITA)] it was observed that the taxpayer had appointed consultant doctors on its panel. The Assessing Officer (AO) noted that the taxpayer had deducted tax at source (TDS) from the honorarium paid to these doctors under section 194J of the ITA, treating it as 'fees for professional services'.

  The AO concluded that the consultant doctors are employees of the taxpayer and the payment made to them was in the nature of 'Salary', and therefore TDS ought to have been deducted under section 192 of the ITA [related to TDS on salary paid to employees], instead of section 194J. Accordingly, the AO held the taxpayer was 'assessee in default' under section 201(1) and 201(1A) of the ITA and raised a demand of tax and interest.
- Aggrieved, the taxpayer filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) held that the consultant doctors were not employees of the taxpayer. The Revenue authorities filed an appeal before the Income-tax Appellate Tribunal (ITAT) against the CIT(A)s order, which was dismissed by the ITAT, amongst others, on the following basis:
  - The AO while passing the order and holding that the honorary doctors were employees of the taxpayer, failed to appreciate that these independent professional doctors enjoyed complete professional freedom; they defined their working protocol, had a free hand in the treatment of patients and there was no control of the taxpayer by way of any direction to the doctors on the treatment of patients;
  - Since the taxpayer was a hospital, it was expected to maintain its image and reputation, for which certain defined procedures and administrative discipline was followed by the honorary doctors. This, however, did not mean that the taxpayer was exercising control and supervision over the doctors in their professional activities, and could not lead to the conclusion that an employer-employee relationship existed;
  - The taxpayer's employees were entitled to Provident Fund (PF), different categories of leave, gratuity, House Rent Allowance (HRA) etc., which the independent doctors were not entitled to.

  Hence it was held that the real intention was the appointment of consultants and not to create any employer-employee relationship. It was held that TDS was correctly deducted under section 194J and not under section 192 of the ITA. The ITAT relied on an earlier ruling[2], to support the above findings, wherein it was held that doctors of this nature could be termed as employees of the hospital.

  Aggrieved, the Revenue filed an appeal before the Bombay High Court (HC) against the ITAT's order.

Relevant provisions in brief:

Extract of Section 194J of the ITA:

"(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—
(a) fees for professional services, or…
…shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount…"

[1] Commissioner of Income Tax, TDS-1, Mumbai v Dr. Balabhai Nanavati Hospital (2025) ITA no. 2166 of 2018 (Bom-HC)

[2] Commissioner of Income Tax (TDS) Vs. Grant Medical Foundation (2015) 375 ITR 49 (Bom-HC)

Extract of Section 192 of the ITA:

"(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year…"

Decision of the HC:

The HC noted/observed the following:

- The doctors were appointed on probation, based on their qualification and expertise in the area of their specialization. They did not receive any fixed monthly remuneration; their payment depended upon the work they did. A part of the remuneration paid by the patients towards these doctors was retained by the taxpayer.
- Further, these doctors were free to practice independently in other hospitals, other than the taxpayer hospital. No PF or Employees' State Insurance Corporation (ESIC) facilities were extended to these doctors, and neither were any perquisites given to them.
- These doctors attended to their duties on the basis of the needs of the patients and they were not bound by any fixed schedule for attending the hospital. The taxpayer did not exercise any real supervisory control in respect of the work entrusted to these doctors.
- All these factors showed that the relationship between the taxpayer hospital and these doctors did not create an '*employer and employee'* relationship.
- Further, these doctors filed their own income-tax return under the head '*Income from Business or Profession*'. These doctors themselves did not treat the remuneration received from the taxpayer hospital as a salary.

In view of the above, the HC dismissed the Revenue's appeal as there was no substantial question of law and upheld the ITAT's finding that there did not exist an employer-employee relationship between the taxpayer and the consultant/honorary doctors, and the payments made to them by the taxpayer was covered under section 194J of the ITA.

Comments:

Taxpayers may often engage doctors, lawyers, freelancers, etc. as consultants, instead of hiring them as full-time employees. In such cases, a question arises whether the consultants should be treated as employees and accordingly, the withholding tax obligations may differ.

The ITAT in this ruling, based on the facts of the case, has held that TDS under section 194J of the ITA would be attracted and not under section 192 of the ITA, based on following:

- The doctors were appointed on probation, based on their qualification and expertise in the area of their specialization. They did not receive any fixed monthly remuneration, and their payment depended upon the work they did.
- No PF or ESIC facilities were extended to these consultant doctors and neither were any perquisites given to them. These doctors attended their duties on the basis of the needs of the patients and they were not bound by any fixed schedule for attending the Hospital.
- The hospital did not exercise any real supervisory control in respect of the work entrusted to the doctors.

It is pertinent to note that the HC, in terms of the other issue related to TDS on payment towards Annual Maintenance Contracts (AMCs) in respect of various hospital equipment, remanded the matter to ITAT for fresh consideration.

Further, amongst others, the following principles could be inferred based on certain earlier rulings[3], that an employer is a person under whose direct control, supervision and direction the employee works. The employer receives the benefits arising from employee's work which constitutes an inseparable part of the employer's business. It is therefore the employer who bears the risks, cost and responsibilities of employees work. The employer is also responsible for reviewing and appraising the employees work performance and has the right to determine the remuneration of the employee. These principles may be helpful in determining the true essence of the arrangement.

Taxpayers may evaluate the impact of this ruling to the specific facts of cases.

[3] Ram Prashad vs. Commissioner of Income-tax [1972] 86 ITR 122 (SC)[24-08-1972], Dharmangadha Commercial Works vs. State of Saurashtra [1957]; K.R. Kothandaramam vs. CIT [1966] 62 ITR 345

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