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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 95/2015

**COMMISSIONER OF INCOME TAX-21
(ERSTWHILE CIT-XIII)**

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel, Ms Radhika Gupta and Mr
Abhishek Sharma, Advocates.

versus

DR. JAIDEEP KUMAR SHARMA

..... Respondent

Through: Mr Gautam Jain, Advocate.

AND

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ITA 352/2015

**COMMISSIONER OF INCOME TAX-21
(ERSTWHILE CIT-XIII)**

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel, Ms Radhika Gupta and Mr
Abhishek Sharma, Advocates.

versus

DR. JAIDEEP KUMAR SHARMA

..... Respondent

Through: Mr Gautam Jain, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

**ORDER
19.11.2015**

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1. These appeals by the Revenue are directed against the common order dated 25th July, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5696/Del/2011 for Assessment Year ('AY') 2008-09 and ITA No.3893/Del/2010 for AY 2007-08.

2. The Assessee is a Doctor and is carrying on his professional activities at his diagnostic centre i.e. Dr. Jaideep's Diagnostic Centre, 30 JCM DLF-II, Gurgaon. He is the Proprietor of the said Centre. The Assessee filed a return of income on 26th September, 2008 declaring an income of Rs.7,95,291/-. The return was picked up for scrutiny and a notice was issued to the Assessee by the Assessing Officer ('AO'). During the course of the assessment proceedings, it was noticed that the Assessee had debited a sum of Rs.56,21,675/- under the head "Lab Test Expense". It was noticed that this payment was made to M/s SRL Ranbaxy Ltd. without deduction of tax at source although the payment was covered under Section 194J of the Act. Accordingly, the AO disallowed the expense under Section 40(a)(ia) of the Act and added it back to the income of the Assessee.

3. Aggrieved by the order of the AO, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) accepted the

plea of the Assessee that the payment made to M/s SRL Ranbaxy Ltd. was not liable for deduction under Section 194J of the Act.

4. The ITAT has in the impugned order dated 25th July, 2014 referred to the insertion of the second proviso to Section 40(a)(ia) of the Act by Finance Act, 2012 as discussed by Agra Bench of the ITAT in the case of **Rajiv Kumar Aggarwal v. CIT** (order dated 29th May, 2013 in ITA No.337/Agra/2013) which in turn followed the decision of this Court in **CIT v. Rajinder Kumar 362 ITR 241**. It was held that the second proviso is declaratory and curative in nature. It was held that as long as the corresponding income was brought to tax in the hands of the payee, it was not intended to disallow the expenditure in the hands of the payer due to non deduction of tax at source.

5. The ITAT has in the impugned order in the present case noted that “the Assessee has filed necessary confirmation from the payee that they have paid the amount received from the Assessee. The confirmation filed by the Assessee was enclosed in the paper book filed before the CIT(A).”

6. In similar circumstances, this court recently in **CIT v. Ansal Landmark Township (P.) Ltd. (2015) 377 ITR 635 (Del)** decided a similar issue in

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favour of the Assessee approving the order of the Agra Bench of the ITAT in the *Rajiv Kumar Aggarwal (supra)*.

7. While admitting the present appeal on 27th February, 2015 the following questions were framed for consideration:

“Did the ITAT fall into error in holding that the disallowance under Section 40 (a) (ia) on account of the assessee not following the provisions of Section 194 (J) and 194 (C) in the given facts of this case, was not justified.”

8. In the light of the above discussion, the question is answered in the negative i.e. in favour of the Assessee and against the Revenue. The appeal is dismissed.



S. MURALIDHAR, J



VIBHU BAKHRU, J

NOVEMBER 19, 2015
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