IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1433 OF 2016

Commissioner of Income Tax-TDS-2 … Appellant

V/s.

National Health & Education Society … Respondent

Mr.Suresh Kumar for the Appellant.
Ms.Rutuja Pawar i/by Mr.S.C.Tiwari for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : MARCH 6, 2019.

P.C.:-

1. Revenue has filed this appeal challenging the judgment of the Income Tax Appellate Tribunal. Following questions are presented for our consideration:-

> "(1) Whether on the facts and in the circumstances of the case and in law, the ITAT was correct in holding that the orders passed by the AO under section 201(1) for the Financial year commencing on 1st April 2007 and earlier years are time-barred without appreciating the facts that as per proviso to sub-section 3 of the section 201 and as per CBDT's Circular No.5/2010 dated 03.06.2010, the time-limit for passing such orders is 31.03.2011?
> (2) Whether on the facts and in the circumstances of the case and in law, the ITAT was

correct in not treating the Hospital Based Consultants (HBCs) as employees and therefore provisions of Sec.192 is not applicable?

(3) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the payments made to the employees of Hinduja Foundation who had worked with the assessee for rendering various services is to be treated as reimbursement and not as payments towards professional fees instead of ITAT treating it as a reimbursement of expenditure and TDS was required to be deducted u/s 194?

(4) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the drug handling charges paid by the Assessee are covered under section 194C for the purpose of TDS without appreciating that these are commission liable for TDS under section 194H?"

2. Question No.1 Relates to the decision of the Tribunal to hold that the order passed by the Assessing Officer under Section 201(1) of the Income Tax Act, 1961 ("the Act" for short) was barred by limitation. Question Nos.2,3 and 4 relate to the merits of the deductions to be made at source. Learned counsel Miss Pawar for the assessee is correct in pointing out that the Tribunal in the impugned judgment has decided only the question of limitation and held that the order of Assessing Officer' order was barred by limitation. In that view of the matter, the question

Nos.2,3 and 4 raised by the revenue do not arise out of the impugned judgment of the Tribunal. Neverthless if it can be gathered that on the merits also the revenue has no arguable case, it would be futile to test the Tribunal's judgment on the issue of limitation.

3. In this context, counsel for the revenue fairly brought to our notice a judgment of this Court in case of this very assessee dated 22nd February, 2019 in Income Tax Appeal No.105 of 2016 and connected appeals in which all three questions Nos.2 to 4 noted above came up for consideration before the High Court and the revenue's appeal raising such questions was dismissed. Under circumstances, without recording separate reasons, this appeal is also dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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