

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

**INCOME TAX APPEAL NO.1478 OF 2016
WITH
INCOME TAX APPEAL NO.1481 OF 2016
WITH
INCOME TAX APPEAL NO.352 OF 2017**

Commissioner of Income Tax-TDS-2 ... Appellant

V/s.

M/s Saifee Hospital ... Respondent

Mr.Suresh Kumar for the Appellant.

Ms.Aasifa Khan for the Respondent.

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

P.C.:-

1. These three Appeals under Section 260-A of the Income Tax Act, 1961 (the Act), challenge a common order dated 29th January, 2016 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order inter-alia disposes of appeals relating to Assessment Years 2008-09, 2009-10 and 2010-11. Therefore, these three appeals.

2. All these appeals raise the following identical questions of law for our consideration:

“(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the Payments made by the assessee for services rendered by the supplier for maintenance of medical equipments is not liable for deduction under Section 194J, without appreciating that the services received by assessee are technical and managerial in nature?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the Payment made to M/s Monginis Hospitality Services Pvt. Ltd. are payments for work contract covered under Section 194C and not fees for technical services under Section 194J, without appreciating that the services received by assessee are technical and managerial in nature?

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in accepting the claim of the assessee that tax was not deductible on 75% of actual payments made to the Doctors under Section 194J of the Act as only 25% of the total amount paid by the patient were routed through the Hospital and 75% of the actual payment were recovered directly from the patient by the Doctors?

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in deleting the demand us 201(1A) of the Act without appreciating the fact that in the case of Hindustan

Coca Cola Beverage Pvt. Ltd. it was clearly mentioned that "this will not alter the liability to charge interest under Section 201 (1A) of the Act till the date of payment of taxes by the deductee-assessee?

(e) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting the order of the Assessing Officer by holding that the assessee is not in default under Section 201(1) in respect of the amount of tax which has not been deducted from the payments made under the required sections and that the assessee is not liable for levy of interest under section 201(1A)?"

3. Re.Question No.a-

(a) The impugned order of the Tribunal dismissed the Revenue's appeal seeking deduction of tax at source under Section 194J of the Act in respect of services rendered for maintenance of medical equipment. The impugned order of the Tribunal while dismissing Revenue's appeal placed reliance upon its order dated 16th September, 2015 in respect of the same respondent-assessee for the assessment year 2011-12. In the above order, it was held that the services which are rendered for maintenance of equipment would not be in the nature of technical services. These services being of routine nature, would not be qualified to be

called technical services which would require deduction under Section 194J of the Act. Purpose of this services was only to ensure a proper maintenance of the machinery/equipment so as to ensure long life for the same.

(b) We note that Commissioner of Income Tax (Appeals) as well as the Tribunal have on facts come to the conclusion that the services rendered in respect of the equipments are only in nature of maintenance services provided to ensure they function properly and would be able to provide services for a long period of time. This does not involve any technical service. These concurrent findings of the fact has not been shown to be perverse.

(c) Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. Re.question Nos.b,c,d and e.

(a) It is agreed position between the parties that these questions are identical to those urged in Income Tax Appeal No.1425 of 2016 in respect of the same respondent-assessee relating to the assessment year 2011-12. We have today by a separate order disposed of the above appeal of the revenue holding that the

question Nos.b and c as proposed do not give rise to any substantial question of law and question Nos.d and e have become academic in view of question Nos. b and c not been entertained.

(b) In the above view, these questions do not give rise to any substantial question of law for the reasons indicated in our order passed today in Income Tax Appeal No.1425 of 2016. Thus, not entertained.

5. Appeals dismissed. No order as to costs.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

....