

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

**INCOME TAX APPEAL NO.1628 OF 2017  
WITH  
INCOME TAX APPEAL NO.1629 OF 2017**

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

V/s.

Super Religare Laboratories Ltd.      ....Respondent

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Mr. Suresh Kumar for appellant.

Mr. Ravi Sawana i/b. Mr. Sriram Sridharan for respondent.

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**CORAM : K.R. SHRIRAM &  
AMIT B. BORKAR, JJ.  
DATED : 21<sup>st</sup> OCTOBER 2021**

**P.C. :**

1            Appellant is impugning an order dated 30<sup>th</sup> September 2016 passed by the Income Tax Appellate Tribunal (ITAT) and the substantial questions of law proposed are as under :

*“a) Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT was justified in holding that the relationship between the assessee and collection centres is in the nature of Principal to Principal and not that of Principal to Agent and that the assessee company was not liable to deduct TDS u/s. 194H of the I.T. Act?*

*(b) Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT was justified in not appreciating that all the collection centres are working as agents of the assessee company on the basis of commission only and hence the discounts given to collection centres were in the nature of “commission” within the meaning of Sec. 194H of the Act?”*

2            Respondent is engaged in providing laboratory and testing services to customers through its own and through third party collection centres. Respondent allowed discounts to the collection centres other than

its own centres. For example, collection centres would charge a patient Rs.500/- for a particular blood test and hand over the sample drawn to respondent and respondent would charge the collection centre Rs.400/-. The difference of Rs.100/-, according to appellant, is commission to paid to collection centres and respondent had an obligation under Section 194H of the Income Tax Act, 1961 (the IT Act) to deduct TDS. According to appellant, as respondent failed to deduct such TDS, respondent was a defaulter and Assessing Officer passed an order under Section 201 (1) and 201 (1A) of the IT Act.

3            Respondent challenged that order before Commissioner of Income Tax (Appeals) [CIT (A)] who allowed the appeal. Against that order, appellant preferred an appeal before Income Tax Appellate Tribunal (ITAT) and ITAT confirmed the order of CIT (A). The ITAT has relied upon respondent's own case for Assessment Year 2006-2007 wherein it has held that discount allowed by respondent to the collection centres is not commission and not attracted by the provisions of Section 194H for the reason that there is no principal agent relationship between respondent and the collection centre and the relationship between respondent and collection centres is only principal to principal relationship and therefore, provisions of Section 194H have no application.

4            Section 194H of the Act reads as under :

***194H. - Commission or brokerage***

***Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1<sup>st</sup> day***

*of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rate of [five] per cent :*

*Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed [fifteen thousand rupees] :*

.....

(emphasis supplied)

5 Under Section 194H, the obligations is on any person who is responsible for paying any income by way of commission or brokerage to deduct tax at source at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier. In this case, admittedly, respondent has not been paying any money to the collection centres. Respondent was only receiving payment from the collection centres. As noted earlier, the collection centres collect money from the patient and pays a reduced amount to respondent and keeps the difference for itself as its margin. As the section is applicable only to a person who is responsible for paying to deduct tax at the time of credit to the account of the payee or at the time of payment and as respondent does not perform any act of paying, there is no obligation on the company to deduct tax at source. We fail to understand appellant's arguments as to how respondent was to deduct TDS when it was not making any payment. Mr. Suresh Kumar was

unable to explain how respondent should have deducted TDS and paid with the treasury when respondent was not making any payment. Even the Assessing Officer, who the appellant wishes to support, does not say anything on this. The Assessing Officer's order is contrary to sense.

6           In our view, ITAT (though has applied slightly different preposition while allowing the appeal) has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

7           Both appeals are devoid of merit and are dismissed with no order as to costs.

**(AMIT B. BORKAR, J.)**

**(K.R. SHRIRAM, J.)**