R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF OCTOBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.303 OF 2013

BETWEEN:

TTK HEALTHCARE TPA PRIVATE LIMITED
NO.2, H.B. COMPLEX
100FT. BTM RING ROAD
BTM 1ST STAGE, BTM LAYOUT
BANGALORE-560068
REPRESENTED HEREIN BY ITS
MANAGING DIRECTOR
MR. GIRISH RAO.

... APPELLANT

(BY Mr. T SURYANARAYANA, ADV.,)

AND:

1. THE DEPUTY COMMISSIONER OF INCOME TAX (TDS)
TDS CIRCLE-18(2), 4TH FLOOR
NO.59, HMT BHAVAN
BELLARY ROAD, BANGALORE-560032.

2. THE COMMISSIONER OF INCOME-TAX
(TDS), 4TH FLOOR, NO.59, HMT BHAVAN
BELLARY ROAD, BANGALORE-560032.

... RESPONDENTS

(BY Mr. K.V. ARAVIND, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 28.02.2013 PASSED IN ITA

NOS.424-429/BANG/2011 FOR THE ASSESSMENT YEAR 2004-05 TO 2009-10, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:

(I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE, 'C' BENCH IN ITA NO.424-429/BANG/2011 DATED 28-02-2013.

THIS ITA COMING ON FOR FURTHER HEARING, THIS DAY, **ALOK ARADHE J.,** DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment years 2004-05 to 2009-10. The appeal was admitted by a bench of this Court vide order dated 03.09.2013 on the following substantial questions of law:

> *(i) The Hon'ble Tribunal was right or justified in confirming the order passed by the CIT(A) in holding that the Appellant, a TPA, was required to deduct tax at source on payments made to hospitals under Section 194J of the Act?*

(ii) The Hon'ble Tribunal was justified in following the decisions of the Hon'ble Bombay High Court in the case of Dedicated Health Care Service TPA (India) Pvt Ltd Vs ACIT [2010] 324 ITR 345 (Bom.) and of the Hon'ble Delhi High Court in the case of Vipul Medcorp TPA (P) Ltd., v. Central Board of Direct Taxes [2011] 245 ITR 325 (Del.) in arriving at the above conclusion?

(iii) Circular No.8/2009 dated 24.11.2009 issued by the CBDT can be said to be in conformity with the provision contained in Section 194J of the Act?

(iv) The Hon'ble Tribunal was correct in remanding the matter to the CIT(A) to consider de novo the alternate contention of the Appellant that it cannot be held to be an 'assessee-in-default' unless it is demonstrated that the payee-hospitals had failed to discharge their tax liability on the payments made to them by the Appellant?

(v) The Appellant is liable to pay interest in terms of Section 201(1A) of the Act?

FACTUAL BACKGROUND:

2. Factual background, in which the aforesaid substantial questions of law arise for our consideration in this appeal need mention. The assessee is a company engaged *inter alia* in the business of providing Third Party Administration (hereinafter referred to as the TPA for short) services on medical / health insurance policies issued by the insurance companies. The services provided by the assessee inter alia include enabling the policy holders viz., the patients to obtain medical treatment from the hospital without making upfront payments to the hospitals by direct settlement i.e., cashless scheme and reimbursement of claims of policy holders in accordance with the terms of the insurance policy. The assessee makes payment to the hospitals under the cashless scheme in fulfillment of contractual obligations between the insurance companies and the policy holders on one hand and the insurance companies and the assessee on the other hand and not in

consideration of any professional services rendered by the hospital. The assessee's obligation to make payment to the hospitals is as an agent to the insurance companies and not in consideration for any professional services rendered by the hospital to the assessee.

3. The Deputy Commissioner of Income Tax (TDS) conducted a survey of the premises of the assessee and recorded the statement of assessee's Chief Executive Officer under Section 133A of the Act. Thereafter, a show cause notice dated 19.01.2009 was issued to the assessee for financial years 2003-04 to 2008-09 by which assessee was asked to show cause as to why it should not be treated as 'assessee in default' under Section 201(1) and interest be not levied under Section 201(1A) of the Act for non deduction of tax under Section 194J from the payments made by it to the hospitals. The assessee thereupon filed the written submissions on 30.01.2009. The Deputy Commissioner of Income Tax (TDS) passed orders on 06.03.2009

under Section 201(1) and 201(1A) of the Act for Financial years 2003-04 to 2008-09 and inter alia held that payments made by the assessee to the hospitals constituted fees for professional services liable for tax deduction at source under Section 194J of the Act. Accordingly, a total demand of Rs.107,54,66,829/- was raised.

4. The assessee thereupon filed appeals on 09.04.2009 before the Commissioner (Appeals). One Medi Assist India TPA (P) Ltd. approached this court by filing W.P.No.11376-11382/2009. A learned Single Judge of this court by an order dated 13.08.2009 inter alia held that the TPA's were liable to deduct tax from the payments made to the hospital under Section 194-J of the Act. Thereupon CBDT issued a Circular No.8/2009 dated 24.11.2009 by which it was provided that all payments made by the TPAs to the hospital on behalf of the insurance company would attract deduction of tax at source under Section 194J of the Act. In the meanwhile,

the aforesaid Medi Assist India filed writ appeals challenging the order passed by the learned Single Judge on 18.12.2009. The Deputy Commissioner of Income Tax (TDS) passed an order on 21.01.2010 under Section 201(a) and 201(1A) of the Act for Financial years 2008-09 and 2009-10 holding the assessee to be liable for tax deduction at source under Section 194J of the Act in respect of payments made by it to the hospitals and issued demand notices. The assessee challenged the aforesaid order in a writ petitions viz., W.P.No.6385-86/2010.

5. In the meanwhile, the Commissioner of Income Tax (Appeals) by an order dated 22.02.2011 inter alia relying on the order passed by the learned Single Judge of this court in case of Medi Assist as well as Circular No.8/2009 dated 24.11.2009 upheld the order passed by the Deputy Commissioner of Income Tax (TDS). The assessee thereupon approached the Income Tax Appellate Tribunal (hereinafter referred to

as 'the Tribunal' for short) by filing appeals against the order passed by the Commissioner of Income Tax (Appeals). During the pendency of the appeals before the Tribunal, a division bench of this court by order dated 14.03.2012, set aside the order passed by the learned Single Judge *inter alia* on the ground that the writ petitions ought not to have been entertained in the state of statutory alternative remedy. The writ appeals preferred by the assessee were also disposed of by relegating the assessee to avail of the alternative remedy. The Tribunal vide impugned order dated 28.02.2013 inter alia held that assessee was required to deduct tax at source under Section 194J of the Act on payments made by it to the hospitals. In the aforesaid factual background, this appeal has been filed.

SUBMISSIONS ON BEHALF OF THE ASSESSEE:

6. Learned counsel for the assessee at the outset, took us through the background and the

legislative history, under which Section 194J was inserted in the Act. It is submitted that Section 194J covers only fees for professional services paid to professionals or a group of professionals carrying out a professional activity. It is urged that a profession can be carried on by an individual or a group of individuals because 'profession' requires expertise and professional skills. It is also argued that expression 'professional services' in the explanation to Section 194J of the Act means services provided by an individual or group of individuals by exercising their expertise or skill and in the context of medical services it can only be those rendered by the Doctors. It is also urged that the definition of professional services in the explanation to Section 194J where the phrase '*services rendered by a person in the course of carrying out medical profession*' has to be read in the backdrop of the legislative history and if so read, it is evident that only services rendered by individuals or group of individuals carrying on the

profession can be covered under this provision. In this connection, our attention has been invited to Circular No.714 dated 03.08.1995 and Circular No.715 dated 08.08.1985. It is also argued that payments were made by the assessee to the hospitals on behalf of insured towards hospitalization charges and not towards any 'fees for professional services'. It is also argued that there is no privity of contract between TPAs and the individual.

7. It is contended that hospitals do not carry on any profession but are engaged in business activity. Therefore, they would be outside the definition of Explanation (a) to Section 194J(3) of the Act. It is further submitted that only an individual can carry on a medical profession and a hospital cannot carry on profession. In this connection, our attention has been invited to the expression 'profession' as mentioned in Black's Law Dictionary 6th Edition. It is also argued that exercise of profession requires intellectual skill and

ability and special qualification and hospital is simply a place for medical treatment, which by itself does not provide any professional services or does not carry on medical profession. It is also pointed out that from perusal of Sections 35AD(8)(C), 44AA and 80-IB, it is evident that hospitals carry on a business and not a profession. Our attention has also been invited to provisions of Indian Medical Council Act, 1956 in support of the proposition that only an individual is entitled to practice medicine and therefore, the hospital cannot practice medicine. The provisions of the Chartered Accountants Act, 1949 and Advocates Act, 1961 have also brought to our notice.

8. It is also argued that payments made to the hospitals by the TPAs are not in the nature of professional incomes in the hands of the hospitals and are in nature of the business income and it is the nature of income in the hands of the recipient, which determines the issue of deductibility of tax at source. It

is also argued that TPAs role for the hospitals is merely to make payment on behalf of the insured individuals as their agents and therefore, where individuals are exempt from deduction of tax at source under Section 194J, the same analogy applies to TPAs as well.

9. It is also contended that the third person used in Explanation (a) to Section 194J(1) of the Act has to be understood in context with reference to each profession mentioned therein independently. It is also pointed out that the term "person" used in Section 194J(1) and in Explanation (a) to the aforesaid Section cannot be compared as they refer to two different persons viz., the payer and the payee. It is also urged that the expression "person" is wider than the term "resident" and the term "professional services" cannot be interpreted by removing the term "medical profession" and should be read as a whole. It is also urged that the hospital do not carry on the medical profession. However, the aforesaid crucial aspect of the

matter has not been taken note of by Bombay High Court in ***'DEDICATED HEALTH CARE SERVCIES TPA (INDIA) (P.) LTD. VS. ASSISTANT COMMISSIONER OF INCOME-TAX', (2010) 191 TAXMAN 1 (BOMBAY)*** and Delhi High Court in ***'VIPUL MEDCORP TPA (P.) LTD. VS. CENTRAL BOARD OF DIRECT TAXES', (2011) 14 TAXMANN.COM 13 (DELHI)*** and both the High Courts have expanded the scope of the section which is not permissible in law. In support of aforesaid submissions, reliance has been placed on decisions in ***'CHAMBER OF INCOME-TAX CONSULTANTS VS. CENTRAL BOARD OF DIRECT TAXES', (1994) 75 TAXMAN 669 (BOMBAY), 'DR. DEVENDRA M SURTI VS. STATE OF GUJARAT', (1969) 1 SCR 235, 'COMMISSIONER OF INCOME-TAX VS. MANMOHAN DAS', (1996) 59 ITR 699 (SC), 'COMMISSIONER OF INCOME-TAX VS. BHAGWAN BROKER AGENCY', (1993) 70 TAXMAN 453 (RAJASTHAN), 'COMMISSIONEROF INCOME-***

TAX VS, LALLUBHAI NAGARDAS & SONS', (1993) 204 ITR 93 (CALCUTTA), 'STATE OF BOMBAY AND OTHERS VS. HOSPITAL MAZDOOR SABHA AND OTHERS', (1960) 2 SCR 866, 'DR.P.VADAMALAYAN VS. COMMISSIONER OF INCOME-TAX', (1969) 74 ITR 94 (MADRAS), 'COMMISSIONER OF INCOME-TAX VS. DR.V.K.RAMACHANDRAN', (1981) 6 TAXMAN 348 (MADRAS), 'NATVARLAL AMBALAL DAVE VS. COMMISSIONER OF INCOME-TAX', (1997 225 ITR 936 (GUJARAT), 'COMMISSIONEROF INCOME-TAX VS. UPASANA HOSPITAL', (1996) 89 TAXMAN 525 (KERALA), 'SRI.LAKSHMI TRUST VS. COMMISSIONER OF INCOME-TAX', (1995) 53 ITD 528 (BANGALORE), 'COMMISSIONER OF INCOME-TAX VS. DR.K.K.SHAH', (1982) 135 ITR 146 (GUJARAT), 'COMMISSIONER OF CENTRAL EXCISE VS. RATAN MELTING AND WIRE INDUSTRIES', (2008) 17 STT 103 (SC), 'UCO BANK VS. COMMISSIONER OF INCOME-TAX', (1999) 104

TAXMAN 547 (SC), 'BEN GORM NILGIRI PLANTATIONS CO. CONOOR (NILGIRIS) AND OTHERS VS. SALES TAX OFFICER (1964) 15 STC 753, ' COMMISSIONER OF INCOME-TAX VS. CARGO LINKERS', (2009) 179 TAXMAN 151 (DELHI), 'CIT VS. VEGETABLE PRODUCTS LTD.', (1973) 88 ITR 192 (SC), 'CIT VS. MADHO PD. JATIA', (1976) 105 ITR 179 (SC), CIT VS. KULU VALLEY TRANSPORT CO. P. LTD.', (1970) 77 ITR 518 (SC), 'GE INDIA TECHNOLOGY CEN. (P.) LTD. VS. CIT', (2010) 193 TAXMAN 234 (SC) and '***CIT VS. TARA AGENCIES', (2007) 162 TAXMAN 337 (SC).***

<u>SUBMISSIONS ON BEHALF OF THE REVENUE:</u>

10. On the other hand, learned counsel for the revenue submitted that Section 194J refers to "person" and therefore, includes the assessee and cannot be confined to individuals alone. It is also pointed out that definition of "professional service" in Section 194J is for

the purposes of the Section and the same has rightly been interpreted by Bombay High Court in 324 ITR 345 and Delhi High Court in 245 CTR 125. The meaning assigned under other enactments cannot be applied to assign a meaning to the expression "professional services". It is also argued that relation between assessee and hospital is principal to principal and assessee is not merely making payment on behalf of the policy holder and under the contractual obligation by virtue of the agreement by the assessee with the hospital the payment is made. It is also argued that the umbrella of services provided by the hospital will fall within the ambit of professional services and the services rendered by the hospital are institutional services in the course of carrying on medical profession. It is also submitted that the judgments relied on by the assessee on the interpretation of professional services are in different context and the same are considered by Bombay as well as Delhi High Court. It is also pointed

out that validity of Circular No.8/2009 dated 24.11.2009 issued by Central Board of Direct Taxes mandating the compliance with requirement of deduction of TDS as prescribed under Section 194J has been upheld by the Bombay as well as Delhi High Court except to the extent of penalty as prescribed under Section 271C. It is also argued that the person referred to in Section 194J and Explanation (a) appended to Section 194J(1) need not himself / herself is to be a Doctor and therefore institutional services rendered by the hospitals would be within the purview of Section 194J of the Act. Lastly, it is urged that controversy involved in this appeal is settled by decisions of Bombay and Delhi High Court and therefore, the appeal deserves to be dismissed.

LEGAL PRINCIPLES:

11. We have considered the submissions made on both sides and have perused the record. Before proceeding further, we may advert to well settled rule of interpretation of statutes. When a word has been

defined in the interpretation clause, *prima facie* that definition governs, whenever that word is used in the body of the statute ***(SEE: INDIAN IMMIGRATION TRUST BOARD OF NATAL V. GOVINDASWAMY, AIR 1920 PC 114, VANGUARD FIRE AND GENERAL INSURANCE CO. LTD., MADRAS V. FRASER & ROSS, AIR 1960 SC 971, 1960 (3) SCR 857***). As was observed by Lord Dunedin: *"It is a novel and unheard of idea that an interpretation clause which might easily have been so expressed as to cover certain sections and not to cover others should be when expressed in general terms divided up by a sort of theory of applicana singula singulis, so as not to apply to sections where context suggests no difficulty of application. And as recently stated by Lord Lowry: "If Parliament in a statutory enactment defines its terms (whether by enlarging or by restricting the ordinary meaning of a word or expression), it must intend that, in the absence of a clear indication to the contrary, those terms as defined*

shall govern what is proposed, authorized or done under or by reference to that enactment. But where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are therefore normally enacted subject to the qualification – 'unless there is anything repugnant in the subject or context', or unless the context otherwise requires. (Pg 191, Principles of Statutory Interpretation, 13th Edition, Justice G.P. Singh). It is equally well settled legal proposition that once legislature defines a term in interpretation clause, it is not necessary for it to use the same expression again and again in other provisions of the Act. A word or expression once defined has to be given the same meaning unless context requires otherwise ***(SEE: NIMET RESOURCES INC. V. ESSAR STEELS LTD., 2009 17 SCC 313: 2011 2 SCC***

(CIV) 385). When a word has been defined under an Act, its meaning would not vary when the same word is used at more than one place in the same statute, otherwise it will defeat the very object of definition section [See: ***BHAGWATI DEVELOPERS (P) LTD. V. PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD., (2013) 9 SCC 584***]. An explanation is at times appended to a Section to explain the meaning of words contained in the Section. It becomes a part and parcel of the enactment. The meaning to be given to an 'Explanation' must depend upon its terms, and "no theory of its purpose can be entertained unless it is to be inferred from the language used". *In Sundaram Pillai vs. Pattabiraman, the Supreme Court culled out from earlier cases the following as objects of an Explanation to a statutory provision:(a) to explain the meaning and intendment of the act itself, (b) where there is any obscurity or vagueness in the main enactment to clarify the same as to make it consistent with the dominant*

object which it seems to subserve. (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful. (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advanced the object of the Act it can help or assist the courting interpreting the true purport and intendment of the enactment, and (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same. [***SEE***: '***DILIP N. SHROFF V. CIT 2007 6 SCC 329***]. It is well settled rule of statutory interpretation that where the legislature intends to express different intention, it uses the language differently (***SEE – INDRAKUMAR PATODIA V. RELIANCE INDUSTRIES LTD. 2012 (13) SCC 1***). The Court cannot read

anything into statutory provision, which is plain and unambiguous ***(SEE: ANSAL PROPERTIES & INDUSTRIES LTD. V. STATE OF HARYANA (2009) 3 SCC 553).*** The Court would ordinarily take recourse to golden rule of literal interpretation.

RELEVANT STATUTORY PROVISIONS:

12. After having noticed the well settled legal principles with regard to statutory interpretation, we may notice the relevant provisions of Section 194J(1) and relevant extract of Circular No.8/2009 issued by Central Board of Direct Taxes dated 24.11.2009, which read as under:

> *Fees for professional or technical services.*
>
> *194J. (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*
>
> *(b) fees for technical services, or*

(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

(c) royalty, or

(d) any sum referred to in clause (va) of section 28,

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 equal to 55[two per cent of such sum in case of fees for technical services (not being a professional services) or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent of such sum in other cases,] as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

(A) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(i) thirty thousand rupees, in the case of fees for professional services referred to in clause (a), or

(ii) thirty thousand rupees, in the case of fees for technical services referred to in clause (b), or

(iii) thirty thousand rupees, in the case of royalty referred to in clause (c), or

(iv) thirty thousand rupees, in the case of sum referred to in clause (d) :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed 56[one crore rupees in case of

business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :

Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family:

Provided also that the provisions of this section shall have effect, as if for the words "ten per cent", the words "two per cent" had been substituted in the case of a payee, engaged only in the business of operation of call centre.

(2) [***]

(3) [***]

Explanation.—For the purposes of this section,—

(a) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;

(b) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(ba) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(c) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

CIRCULAR NO. 8/2009 [F.NO. 385/08/2009-IT(B)], DATED 24-11-2009

3. The services rendered by hospitals to various patients are primarily medical services and, therefore, provisions of section 194J are applicable on payments made by TPAs to hospitals etc. Further for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

3.1 *In view of above, all such past transactions between TPAs and hospitals fall within provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for*

charging of interest under section 201(1A) and penalty under section 271C.

4. Considering the facts and circumstances of the class of cases of TPAs and insurance companies, the Board has decided that no proceedings under section 201 may be initiated after the expiry of six years from the end of financial year in which such payment have been made without deducting tax at source etc. by the TPAs. The Board is also of the view that tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.). A certificate from the auditor of the deductee assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) of the Income-tax Act till payment of taxes by the

deductee assessee or liability for penalty under section 271C of the Income-tax Act as the case may be.

ANALYSIS:

13. From close scrutiny of the aforesaid provision, it is axiomatic that in Section 194J(1), the expression, any person employed by the legislature in Section 194J(1) refers to the payer, which excludes individual or Hindu Undivided Family. The aforesaid provision mandates deduction of an amount equal to 10%, where any person not being an individual or a Hindu Undivided Family is responsible for paying to a resident any sum inter alia by way of fees for professional services. While defining the character of the payer, the Parliament has referred to the expression any person not being an individual or a Hindu Undivided Family, nothing repugnant to the context appears in Section 194J(1), so as to not read the expression "person" as defined in Section 2(31) of the Act, which

includes an individual; a Hindu Undivided Family; a company; a firm; an association of persons or a body of individuals whether incorporated or not; a local authority; and every artificial judicial person not covered in the previous clauses. The contention that there is no privity of contract between TPAs and individuals and TPAs make payment on behalf of individual also is excluded from purview of Section 194J(1) of the Act, therefore, TPAs should also be excluded appears to be attractive at the first blush, but does not deserve acceptance as on closer scrutiny and taking into account the stand of the assessee before assessing officer, it is evident that the relationship between assessee and the Hospital is principal to principal and assessee makes payment on behalf of contractual obligation between assessee and the bank.

14. However, in Explanation to Section 194J(1), the Parliament has not used the expression "individual" but has used wider expression "person" and therefore, if

the expression "person" is read with reference to Section 2(31) of the Act, it is evident that professional services mentioned in Explanation (a) viz., Legal, Medical, Engineering or Architectural Profession or profession of accountancy or technical accountancy or interior decoration or advertising or such other professions can be carried on by individuals, firm, company, an association of persons, a body of individuals whether incorporated or not, a local authority and every artificial judicial person. The legislature has used a wider term "person" in Explanation (a) to Section 194J(1), in which on plain reading all professional services are covered, therefore, the submission that the word "person" has to be understood in context with reference to each profession independently, does not deserve acceptance as the language used in Explanation (a) to Section 194J(1) is unambiguous and clear. Even otherwise, if the Parliament intended to restrict the scope of Explanation (a) only to the fees received by an

individual, it was open for the Parliament to use the words differently to express different intention as it is well settled that where the legislature intends to express different intention it uses the language differently. If the Parliament had intended that the expression "person" has to be read differently with reference to each profession, it would not have used a wider expression viz., the "person" and would have used the word "individual" or "firm" with reference to legal medical or profession of accountancy and for remaining professions, it would have used the expression "person".

15. We agree with the submission made on behalf of the assessee that a hospital does not carry on profession of medicine as it is not a professional and does not wholly earn professional income. Learned counsel for the assessee is also correct in saying that profession can be carried on by an individual or groups of individuals because profession requires expertise and

professional skills, as held, by Supreme Court in '***DR. DEVENDRA. M. SURTI V. STATE OF GUJARAT', AIR 1969 SC 63.*** However, incidental or ancillary services, which are connected with carrying on Medical Profession are included in the term Professional Services for the purpose of Section 194J. The words "in the course of carrying on" are used with the intention to include incidental, ancillary, adjunct or allied services connected with or relatable to medical services. Thus, the sweep and scope of Explanation (a) to Section 194J is not restricted only to payments made to medical or other professionals but services rendered in the course of carrying on the stipulated profession. It is pertinent to note that payments are made to the hospitals and not personally by the payer to the individual doctors or professionals. The medical services are rendered in the course of carrying on the medical profession. Undoubtedly, the nature of payment in the hands of the recipient, is determinative of deductibility of tax at

source, however, the payments in the hands of hospital cannot be treated to be business income as the payments are received in the course of carrying on the medical profession. It is well settled rule of statutory interpretation that meaning and purport of one section cannot be understood with reference to other sections of the Act. Therefore, with reference to Section 35AD(8)(C), 44AA and 80-IB, it cannot be inferred that the hospitals carry on business and not profession. The submission of TPAs that when they make payments to the hospitals, they are not liable to deduct tax at source as hospitals carry on a business activity under Section 194J, is not worthy of acceptance.

16. In Dedicated Healthcare Services, supra in paragraph 14, the division bench of Bombay High Court while dealing with the Circular No.8/2009 dated 24.11.2009 issued by Central Board Of Direct Taxes has held as follows:

14. Section 119 of the Act provides that the Board may, from time to time issue such orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of the Act and that such authorities and all other persons employed in the execution of the Act shall observe and follow such orders, instructions and directions of the Board. The proviso to Sub-section (1) however stipulates that no such orders, instructions or directions shall be issued (a) so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or (b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions. The Board has by the circular taken the view that payments which are made by TPAs to hospitals fall within the purview of Section 194J. No exception can be taken to the circular to that extent, consistent with the interpretation placed on the provisions of Section 194J in the course of this judgment. However, the grievance of the Petitioners is

that the circular proceeds to postulate that a liability to pay a penalty under Section 271C will be attracted for a failure to make a deduction under Section 194J. Section 273B of the Act provides that notwithstanding anything contained in the provisions inter alia of Section 271C no penalty shall be impossible on the person or the assessee, as the case may be, for any failure referred to in the provision if he proves that there was a reasonable cause for the failure. The vice in the circular that has been issued by the Central Board of Direct Taxes lies in the determination which has been made by the Board that a failure to deduct tax on payments made by TPAs to hospitals under Section 194J will necessarily attract a penalty under Section 271C. Besides interfering with the quasi judicial discretion of the Assessing Officer or, as the case may be, the appellate authority the direction which has been issued by the Board would foreclose the defence which is open to the assessee under Section 273B. By foreclosing a recourse to the defence statutorily available to the assessee

under Section 273B, the Board has by issuing such a direction acted in violation of the restraints imposed upon it by the provisions of Sub-section (1) of Section 119. To that extent, therefore the circular that was issued by the Board would have to be set aside and is accordingly set aside. We also clarify that in making assessments or, as the case may be, in passing orders on appeals filed under the Act, the Assessing Officers and the Commissioner (Appeals) shall do so independently and shall not regard the exercise of their quasi judicial powers as being foreclosed by the issuance of the circular.

17. We respectfully agree with the aforesaid findings recorded by the High Court and to the extent as held by the Bombay High Court, the impugned Circular is quashed. It is needless to state that the Assessing Officer and the Appellate Authority shall independently apply their minds in exercise of their quasi judicial powers without being influenced by the Circular. 11. For the aforementioned reasons, we are not inclined to

agree to the submission made on behalf of the assessee that while interpreting Section 194J, the High Court of Bombay and Delhi High Court have enlarged the scope of the Act. In fact, the language employed in Section 194J is plain and unambiguous, which does not admit of any two interpretations. It is also the submission that the courts have rewritten or recast Section 194J while interpreting the same is also untenable. Since, Section 194J neither suffers from any ambiguity nor admits of two interpretations. The question of taking a view which is favorable to the assessee does not arise. In view of preceding analysis, as well for the reasons assigned by High Court of Bombay and Delhi High Court in Dedicated Healthcare Services supra and Vipul Medcorp supra, we respectfully concur with the view taken by Bombay and Delhi High Court. As an upshot of aforesaid discussion, the substantial questions of law framed are answered in terms of the decisions of High courts of Bombay and Delhi.

In the result, the appeal is disposed of.

Sd/-
JUDGE

Sd/-
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