

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य के समक्ष
Before : Shri Ramesh C.Sharma, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.684, 685 & 686/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14, 2014-15 & 2015-16

Principal Sri Sathya Sai College for Women Sector 2, Jawahar Nagar, Jaipur	बनाम Vs.	The ITO TDS-2 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JPRP01273 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Shri Rajender Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 02/08/2019
घोषणा की तारीख / Date of Pronouncement : 19 /08/2019

आदेश / ORDER

PER RAMESH C. SHARMA, AM

These are the appeals filed by the assessee against three different orders of the Id. CIT(A)-3, Jaipur dated 15-03-2018 for the Assessment Years 2012-13 to 2014-15, in the matter of order passed u/s 201(1)/201(1A) of the I.T. Act, 1961.

2.1 The common ground raised by the assessee in all the three Assessment Years relate to treating the assessee in default u/s 201(1)/

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201(1A) of the Act by the AO for non-deduction of tax at source u/s 194J
on payments made to employees.

2.2 Brief facts of the case are that the assessee runs a college under the name and style of Sri Sathya Sai P.G. College for Women. During the Assessment Years under consideration, the assessee paid salary to its employees who are teaching there on which assessee deducted the tax at source u/s 192 of the Act. The AO held that the employees to whom assessee paid salary are not having any employer-employee relationship between the college teachers/lecturers/ staff. Therefore, the assessee is liable to deduct tax at source u/s 194J of the Act in place of 192 of the I.T. Act, 1961. Accordingly, the demand was raised by the AO u/s 201(1) /201(1A) of the I.T. Act, 1961.

2.3 By impugned orders, the Id. CIT(A) confirmed the action of the AO against which the assessee has further filed the appeals before this Bench.

2.4 I have heard the rival contentions and perused the orders of the lower authorities and found from the record that the assessee college has issued appointment letters to teachers/ lecturers/ staff members from time to time to whom salary was paid. The monthwise salary sheet was also prepared by the college on the basis of the attendance register of the

Principal Sri Sathya Sai College for Women Vs ITO, TDS-2, Jaipur employees. The salary was paid to the employees and due taxes are being deducted u/s 192 of the I.T. Act, 1961. From the record, I found that the assessee is running a college for women under a registered society in the name "Sri Satyha Sai College for Women" at Jawahar Nagar, Jaipur. The assessee has appointed teachers/ lecturers and staff for full time employment as per terms of appointment letter issued by the college. The assessee is paying monthly fixed salary as per the terms of employment of service. The appointment is made under an employer-employee relationship between the college and the teachers/lecturers/ staff. I also found that the college authorities has full control over the teachers/ lecturers/ staff as per their working hours and working days fixed by the employer and they were also supposed to do other work related to the college activities as and when required. Since there was employee and employer relationship between the college teachers/lecturers/staff, therefore, tax on the salary paid to them was correctly deductible u/s 192 of the Act. I also found that in order to establish employee and employer relationship between the college teachers/lecturers/staff, the assessee also produced salary registers and appointment letters before the lower authorities. The Id.AR of the assessee during the course of hearing relied on the order of the ITAT

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Chandigarh Bench (ITA No. 512 to 514/Chd/2014 dated 12-08-2014) in
the case of ACIT (TDS) vs M/s. MCM DAV College for Women wherein
the ITAT, Chandigarh Bench held as under:-

“14. We are in conformity with the findings of the CIT (Appeals) in this regard that in view of various ratio laid down by the Hon'ble Supreme Court and the Hon'ble Delhi High Court and in view of the findings of the CIT(Appeals) vide para 5.6 that the relationship between the management and teaching staff involved an obligation to obey orders in the work to be performed, the said relationship could not be called contract for service since the teaching staff had not undertaken to render any professional or technical service. As there was a contract of service between the assessee deductor and its teaching staff appointed on adhoc basis and the salary paid to them being below the taxable limit, does not warrant deduction of tax at source and such non-deduction of tax at source does not invalidate the provisions of Act making the assessee liable for the demand raised under section 201(1)/201(1A) of the Act. We are in agreement with the observation of the CIT(Appeals) that merely because the assessee had not maintained separate books of account for financially added courses and self financing courses was not relevant, as there was no requirement under the Act and by not maintaining separate books of account, the nature of payment would not get changed. Further in view of the teaching staff being appointed on adhoc basis, for a short period, there was no entitlement for any other benefits like PF, Gratuity, HRA, increment etc. Upholding the order of the CIT(Appeals), we hold that the Assessing Officer was not correct in treating the payments made to the teachers on adhoc basis as professional payments in line with the provisions of section 194J of the Act. The assessee is thus not in default and there is not merit in raising of demand under section 201(1) of the Act and charging of interest under section 201(1A) of the Act. The grounds of appeal raised by the Revenue are thus dismissed.

15. The facts, circumstances and issues in ITA No. 513 to 517/Chd/2014 are identical to the facts in ITA No. 512/Chd/2014 and our decision in ITA No.512/Chd/2014 shall apply mutatis mutandis to ITA Nos. 513 to 517/Chd/2014.

16. In the result, all the appeals of the Revenue are dismissed.”

Before parting with the issue, I observe that the AO has wrongly treated the salary paid to its teachers/ lecturers/staff as professional services which is reproduced as under:-

“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/ company secretary or technical consultancy or interior decoration or advertising or information technology or film artists or authorized representatives.

Further, as per the Notification No. 88/2008 F. No. 275/43/2008-IT(B) dated 21-8-2008 (S.O. 2085 (E) dated 21-08-2008) – Professional Services include sports person, umpires & referees, coaches & trainers, team physicians & physiotherapists, even managers, commentators, anchors and sports columnists.”

In view of above discussions, the Bench observes that the payments made to teachers/ lecturers/ staff by the assessee is covered u/s 192 of the Act and not covered u/s 194J of the Act. The issue is covered by the decision of ITAT Chandigarh Bench (supra) because of the similar facts and

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circumstances of the case. Hence, the solitary ground of the assessee
raised in all the above appeals is allowed.

3.0 In the result, the appeal of the assessee are allowed

Order pronounced in the open court on 19/08/2019.

Sd/-
(रमेश सी शर्मा)
(Ramesh C. Sharma)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19 /08/ 2019

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Principal Sri Sathya Sai College for Women, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward-TDS, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.684 to 686/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar