IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2166 OF 2018

WITH

INCOME TAX APPEAL NO. 2448 OF 2018

WITH

INCOME TAX APPEAL NO. 2451 OF 2018

WITH

INCOME TAX APPEAL NO. 2612 OF 2018

WITH

INCOME TAX APPEAL NO. 2758 OF 2018

WITH

INCOME TAX APPEAL NO. 605 OF 2020

The Commissioner of Income Tax,
TDS-1, Mumbai
having his Office at R.No. 900A, Smt. K.G. Mittal
Ayurvedic Hospital Building,
Charni Road (W), Mumbai – 400 002 .. Appellant

Versus

Dr. Balabhai Nanavati Hospital
Nanavati Hospital Building,
S.V. Road, Vile Parle (W)
Mumbai – 400 056 .. Respondent

Mr. Prakash Chhotaray *a/w Ms. Sangita C. Ms. Akanksha Shukla, Advocates for the Appellant*

Dr. K. Shivaram, Senior Counsel *a/w Mr. Rahul Hakani, Mr. Shashi Bekal, Advocates for the Respondent*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

Reserved on : AUGUST 13, 2025.
Pronounced on : SEPTEMBER 15, 2025

JUDGMENT :- ***(Per B.P. Colabawalla, J.)***

1. All the above Appeals are filed by the Appellant – Revenue challenging the order dated 8th September 2017 (the **"impugned order"**) passed by the Income Tax Appellate Tribunal (for short the "**ITAT**") under the provisions of Section 260A of the Income Tax Act, 1961 (for short the "**IT Act**").

2. Income Tax Appeal No. 2758 of 2018 is in relation to A.Y. 2007-08; Income Tax Appeal No. 2451 of 2018 is in relation to A.Y. 2008-09; Income Tax Appeal No. 2612 of 2018 is in relation to A.Y. 2009-10; Income Tax Appeal No. 2448 of 2018 is in relation to A.Y. 2010-11; Income Tax Appeal No. 2166 of 2018 is in relation to A.Y. 2011-12; and Income Tax

Appeal No. 605 of 2020 is in relation to A.Y. 2012-13. According to the Revenue, the impugned order of the ITAT in the Appeals which relate to A.Y. 2007-08 to A.Y. 2010-11 [Income Tax Appeal Nos. 2758, 2451, 2612, & 2488, all of 2018], give rise to three Substantial Questions of Law which read thus:-

> *"(A). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in holding that there does not exist employer-employee relationship between the assessee and full-time consultant doctors and the payments made to them by the assessee come under the purview of section 194J, whereas as per the terms and conditions of the contract, there exists employer-employee relationship and such payments come within the purview of section 192 of the Act in accordance of the definition of salary given in the Act?*
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> *(B) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in holding that provisions of section 194C are applicable, and not the provisions of section 194J as held by the Assessing Officer, for deduction of tax at source from payment towards Annual Maintenance Contracts in respect of various hospital equipments, without appreciating that the maintenance of specialized machines in hospitals calls for skilled professional technical engineers and hence such maintenance charges are in the nature of fees for technical services within the meaning of section 194J of the Act?*
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> *(C) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in not upholding the order of the Assessing Officer treating the assessee as an assessee in default under section 201(1) of the Act in respect of amount of tax which has not been deducted under section 192 and 194J of the Act from the payments made to the deductees and levy of interest under section 201(1A) of the Act?"*

3. As far as the Appeals for A.Y. 2011-12 and A.Y. 2012-13 are concerned [i.e. ITXA No.2166 of 2018 & ITXA No.605 of 2020], according to the Revenue, only Questions (A) and (C) reproduced above arise for our consideration.

4. The brief facts of this case would reveal that the Assessee (the Respondent – Hospital) is a Trust, which is engaged in the business of running a hospital. In relation to this Trust, a survey under Section 133A was conducted in their premises on 4th October 2010 and a discrepancy was found in deducting TDS, filing of quarterly TDS Returns and delay in deduction of TDS. Accordingly, details were obtained and considered.

5. According to the Revenue, it was observed that the Assessee had appointed consultant doctors on its panel. The Assessing Officer noted that the Assessee had deducted TDS from the honorarium pay to these doctors under Section 194J, treating it as fees for professional services. The Assessing Officer, after examining the appointment letters and the agreement with these consultant/honorary doctors, observed that the Respondent – Hospital exercised a great deal of control over these doctors by subjecting them to various restrictive clauses provided in the terms of employment. This was apart from working attendance conditions, placing accountability and

governing leave etc. In these facts, the Assessing Officer concluded that the consultant doctors are employees of the Assessee and the payment made to them was in the nature of "salary", and therefore TDS ought to have been deducted under Section 192 of the IT Act, instead of Section 194J. Accordingly, the Assessing Officer held the Assessee in default under Section 201(1) and 201(1A) of the IT Act and raised a demand of tax and interest.

6. Apart from the aforesaid, the Assessing Officer also observed that the Assessee was paying Annual Maintenance Contract (**"AMCs"**) charges in respect of the maintenance of various medical equipments like X-Ray machines, HD Dialog dialysis machine, CT Scanners, Olympus endoscopes, MRI scanners, Magnetom Symp/Somantom Sense, Axiomoarties FC, etc. However, whilst making payment under the AMCs, the Assessee deducted TDS under Section 194C of the IT Act. According to the Assessing Officer, these services required human intervention and superior technical skills. Accordingly, after a detailed analysis of the nature of services provided, the Assessing Officer held that the services rendered are "technical services", and therefore, whilst making payment under the AMCs, tax should have been deducted under Section 194J, instead of Section 194C. To come to this conclusion, the Assessing Officer relied upon Circular No. 715 dated 5th August 1995, and a decision of the ITAT in the case of *Ultra Entertainment*

Solution Ltd. Since the Assessing Officer was of the view that TDS was wrongly deducted under Section 194C, when in fact, it should have been deducted under Section 194J, the Assessing Officer, on this count also, held the Assessee as an Assessee in default and raised a demand of tax and interest under Section 201(1) and 201(1A) of the IT Act.

7. Being aggrieved by the order of the Assessing Officer on both the aforesaid counts, the Assessee filed Appeals before the Commissioner of Income Tax (Appeals) [for short "**CIT(A)**"]. The CIT(A), for A.Y. 2007-08 to A.Y. 2010-11 [Income Tax Appeal Nos. 2758, 2451, 2612, & 2488, all of 2018], after hearing the respective parties and for the reasons stated in the order dated 30th March 2013, allowed the Appeals of the Assessee. So far as A.Y. 2011-12 is concerned, the CIT(A), in so far as the issue of payment to the consultant/honorary doctors was concerned, held in favour of the Assessee. However, for payments made under the AMCs, the CIT(A) held that some AMCs, were in the nature of providing "technical services". For A.Y. 2012-13, in so far as the issue of payment to the consultant/honorary doctors was concerned, the CIT(A) held in favour of the Assessee. As far as the AMCs were concerned, the issue did not arise because in A.Y. 2012-13, the Assessee deducted TDS under Section 194J and not under Section 194C. In other words, so far as the issue of the payment to the consultant/honorary doctors

was concerned, the CIT(A) held in favour of the Assessee for all the assessment years. As far as payment under the AMCs was concerned, the CIT(A), for A.Y. 2007-08 to A.Y. 2010-11 held entirely in favour of the Assessee, and for A.Y. 2011-12 held only partly in favour of the Assessee.

8. Being aggrieved by the Orders of the CIT(A), the Revenue filed Appeals before the ITAT. No appeal was filed by the Assessee. The ITAT, vide its impugned judgment and order dated 8th September 2017, and for the reasons stated in the order, dismissed the Appeals of the Revenue. It is being aggrieved by this common order of the ITAT, that all the above Appeals have been filed, contending that the impugned order of the ITAT dated 8th September 2017 gives rise to the substantial Questions of Law reproduced by us above.

9. Since, according to the Revenue, the Appeals relating to A.Y. 2007-08 to A.Y. 2010-11 give rise to basically 3 Substantial Questions of Law, we will deal with these appeals first. At the outset, we must state that really speaking, the Substantial Questions of Law, if any, would be question (A) and question (B) reproduced above, and depending on the answer to these two questions, question (C) would be decided. In other words, really speaking, question (C) is consequential to question (A) and/or question (B).

10. Question (A) is whether the ITAT was justified in holding that there exists an employer-employee relationship between the Assessee and the consultant/honorary doctors, and that the payments made to them by the Assessee would come under the purview of Section 194J of the IT Act. To put it differently, according to the Revenue, the remuneration paid to these consultant/honorary doctors is nothing but a "salary", and hence, TDS ought to have been deducted under Section 192 instead of Section 194J of the IT Act.

11. As far as payment to these doctors is concerned, the CIT(A) noted that the Assessee mainly employs two types of doctors i.e. (a) full time doctors, and (b) freelancer qualified doctors as consultants and in their capacity as "*honorary doctors*". The CIT(A) noted that the appellant deducts tax under Section 192 on the salaries paid to the full time doctors, whereas the tax is deducted under Section 194J in respect of the honorary doctors. The CIT(A) also noted that the Assessing Officer analyzed the terms of service of the honorary doctors and held them to be employees of the Appellant. The CIT(A) thereafter considered the submissions of the appellant, including the list of honorary doctors as well as their terms of appointment. To put it in a nutshell, the Assessee contended that while remunerating the honorary

doctors, it retains a certain percentage from the billings raised on the patients for maintaining its infrastructure and for maintaining its administrative setup. These honorary and visiting doctors are categorized by the Department as "*Professionals*" and have allotted them a PAN and ward in the "*Professional Circle*". In fact, the fees received by these doctors are also assessable / assessed under the head "*Income from Business or Profession*". Apart from this, it was contended that these honorary doctors are not duty bound by hours of attendance etc., and neither are they bound by the service rules of the Assessee. They are free to practice privately and also be honorary / visiting doctors at other medical institutions, other than the Assessee. In fact, these honorary doctors are also attached to other Hospitals, and their total receipts include fees received from the Appellant Trust and also from other Hospitals where they are attached. This is evident from the details of the TDS deducted by the Appellant Trust and the other Hospitals. The Assessee contended that a rough and ready test to ascertain whether a person is an employee is whether, under the terms of his employment, the employer exercises a supervisory control in respect of the work entrusted to him. Further, not only that the employer controls what work is to be done but also how it is to be done. The Assessee submitted that amongst other things, there are several other factors which ought to be considered before coming to the conclusion whether an employer-employee relationship exists. Some of

these are as to whether the person appears on the muster of the employer and does he sign the attendance register; is he subject to the same discipline, timings, rules and regulations applicable to regular employees; is Provident Fund / ESIC deducted from his payment etc. According to the Assessee, all these were conspicuously absent in the facts of the present case, and therefore, the Assessing Officer could never have come to the conclusion that the consultant/honorary doctors are the employees of the Assessee.

12. The CIT(A), after hearing the submissions of the Assessee as well as the Assessing Officer, summarized that the honorary doctors are appointed by the Assessee on the basis of their qualification and expertise in their area of specialization. Further, payment is made to them on the basis of their visits and treatments carried out in respect of the patients. The Hospital retains a part of the payment made by the patients in this regard. The CIT(A) also noted that no fixed monthly remuneration is paid to the said honorary doctors by the Appellant, and that these doctors are also free to practice independently in other Hospitals, and their own Clinics / Hospitals (other than the Assessee). The CIT(A) further noted that the Appellant does not provide any PF/ ESIC facilities to these doctors and neither are any perquisites given to them. The honorary doctors attend to their duties on the basis of the needs of the patients and they are not duty bound as per any fixed

schedule of attendance. The CIT(A) also found that the Appellant does not really exercise any supervisory control in respect of the work entrusted to the honorary doctors and neither are they required to sign any attendance register. Looking at all these facts, the CIT(A) came to the conclusion that the honorary doctors do not fall in the category of employees of the Assessee. They perform their services in the Hospital of the Appellant as per the needs and requirements of the patients in the area of their specialization. Accordingly, the CIT(A) concluded that the provisions of Section 192 of the IT Act [for deduction of TDS] are not attracted.

13. As mentioned earlier, this finding of the CIT(A) was challenged before the ITAT. On this issue, the ITAT confirmed the order of the CIT(A). The discussion of the ITAT, on whether the honorary doctors are the employees of the Assessee, can be found from paragraph 10 to paragraph 14 of the impugned order. The ITAT, after examining the facts of the case came to the conclusion that the Assessing Officer, while passing the order and holding that the honorary doctors are employees of the Assessee, failed to appreciate that these independent professional doctors enjoy complete professional freedom, they define working protocol, have a free hand in treatment of patients and there is no control of the Assessee – Hospital by way of any direction to the doctors on the treatment of patients. All that

these doctors have to do is to follow some defined procedure and also certain administrative discipline, akin to that of a honorary consultant, to maintain uniformity in action. Since the Assessee was a Hospital, it is expected to maintain its image and reputation, for which certain defined procedures and administrative discipline have to be followed by the honorary doctors. This, however, does not mean that the Assessee Hospital is exercising control and supervision over the doctors in their professional activities, and certainly cannot lead to the conclusion that an employer-employee relationship existed. The ITAT noted that the Assessing Officer had merely compared the appointment letter in the case of an honorary consultant and independent professional doctors and brought out differences to hold that the independent professional doctors are employees. The ITAT however held that in doing so, the Assessing Officer overlooked the similarities in the two, which is necessary to draw the point that both are professionals. The ITAT held that the Assessing Officer ignored the Assessee's submission on the comparison between the Assessee's employees entitled to PF, different categories of leave, gratuity, HRA etc., which the independent doctors were not entitled to. On this factual situation, the ITAT held that the real intention of the parties in the present case was the appointment of consultants and not to create any employer-employee relationship. It, therefore, held that TDS was correctly deducted under Section 194J and not under Section 192 of the

IT Act. To support these findings, the ITAT also relied upon the judgment of this Court in the case of ***Commissioner of Income Tax (TDS) Vs. Grant Medical Foundation (2015) 375 ITR 49 (Bom.)*** where, in almost identical facts, this Court took a view that doctors of this nature cannot be termed as employees of the Hospital.

14. Having carefully gone through the order of the ITAT as well as that of the CIT(A), we find that both the Authorities below have examined the factual aspects of the matter and thereafter concluded that the doctors in question cannot be termed as employees of the Assessee Hospital. They have come to this finding for good reason. As mentioned earlier, these doctors are appointed firstly on a probation basis, taking into consideration their qualification and expertise in the area of their specialization. Most importantly, they do not receive any fixed monthly remuneration, and it depends upon the work they do. In fact, a part of the remuneration paid by the patients towards these doctors is retained by the Hospital. Further, these doctors are also free to practice independently in other Hospitals, other than the Assessee Hospital. No PF or ESIC facilities are extended to these doctors and neither are any perquisites given to them. These doctors attend to their duties on the basis of the needs of the patients and they are not bound by any fixed schedule for attending the Hospital. In other words, the Assessee

Hospital does not exercise any real supervisory control in respect of the work entrusted to these doctors. All these factors clearly go to show that the relationship between the Assessee Hospital and these doctors, cannot and does not create any relationship of "*employer and employee*". Another factor which is also important to note is that these very doctors filed their Income Tax Return under the head "*Income from Business or Profession*". These doctors themselves also do not treat the remuneration received from the Assessee Hospital as a salary, as contended by the Assessing Officer. For all these reasons, we are clearly of the view that Question (A) as projected by the Revenue does not give rise to any Substantial Question of Law requiring an answer by this Court.

15. This now leaves us to deal with Question (B), namely, whether the Assessee was correct in deducting TDS under the provisions of Section 194C for payments made towards AMC charges, and not under the provisions of Section 194J as held by the Assessing Officer. As mentioned earlier, this issue arises in A.Y. 2007-08 to A.Y. 2010-11 where the CIT(A) held entirely in favour of the Assessee. In A.Y. 2011-12, on this issue, the CIT(A) held only partly in favour of the Assessee. In other words, for A.Y. 2011-12, the CIT(A) held that payments made under some of the AMCs were in fact payments for "technical services", and therefore, before making these payments, TDS ought

to have been deducted under Section 194J, instead of 194C. For A.Y. 2011-12 [on this issue of payments made under the AMCs], neither the Revenue nor the Assessee have filed any appeal before the ITAT.

16. As far as the issue of AMCs is concerned, the Assessing Officer *inter alia* held that the Assessee was paying AMC charges in respect of various sophisticated medical equipments X-ray machines, HD Dialog dialysis machine, CT Scanner, Olympus endoscopes, MRI Scanner etc. According to the Assessing Officer, these services required human intervention with superior technical skills. Accordingly, the Assessing Officer held that the services provided under the AMCs are "technical services" and TDS should have been deducted under Section 194J instead of Section 194C of the IT Act. In other words, payments made under the AMCs were not in the strict sense as payments to contractors as contemplated under Section 194C, but were fees for "technical services", and therefore, Section 194J was attracted for the purposes of deduction of TDS. As mentioned earlier, being aggrieved by the decision of the Assessing Officer, the Assessee preferred Appeals before the CIT(A). The CIT(A), on this issue, for A.Y. 2007-08 to A.Y. 2010-11 held in favour of the Assessee. The findings of the CIT(A) can be found at paragraph 4.4 onwards of the order dated 30th March 2013. The CIT(A) noted that the Assessee Trust had entered into various AMCs with

various vendors to maintain the equipment and machines supplied by them to the Hospital wherein the vendors have agreed to render various services by carrying out any work, including supply of labour necessary to fulfill their obligations under the AMCs. The CIT(A) examined the contracts with different parties and thereafter came to a factual finding that all these contracts were for periodical inspection and routine maintenance work along with supply of spare parts. He, therefore, took a view that this did not constitute fees for "technical services". The CIT(A) also noted that the payments to these vendors (under the AMCs) were duly disclosed by the Assessee in the Profit and Loss Account under the head "*Repairs and Maintenance Charges*" and not as "*Professional Fees*". Looking at all the facts and circumstances of the case, the CIT(A) came to the conclusion that payments under the AMCs were covered under Section 194C of the IT Act and the Assessee had correctly deducted tax under the said provision. To buttress its finding, the CIT(A) also relied upon a decision of the ITAT, Ahmedabad in the case of ***Gujarat State Electricity Corporation Ltd. Vs. Income Tax Officer, 3 SOT 468 (Ahd.)*** wherein it was held that payments made by the Assessee Company to the *Gujarat State Electricity Corporation Ltd.* for the entire operation and maintenance of the power plant under a comprehensive contract could not be treated as payment of fees for "*Professional Services*" as contemplated in Section 194J but were covered by

Section 194C of the IT Act. The CIT(A) also relied upon another decision of the ITAT, Ahmedabad, in the case of ***Nuclear Power Corporation Ltd. ITA No. 3059 to 3061/Ahd/2009 dated 30/9/2011*** which *inter alia* held that repairs and AMCs for computers do not fall under services of a technical nature so as to be assessable as fees for technical services. Hence, the Assessee was required to deduct TDS under Section 194C and not under Section 194J of the IT Act.

17. However, for A. Y. 2011-12, on the issue of whether payments made under the AMCs were for "technical services", another CIT (A), by his order dated 26th November 2013, came to the conclusion that the AMCs entered into with (i) Philips Medical Systems (I) Pvt Ltd for high tech Equipment, C. T. Scan etc; (ii) Care and Cure Diagnostic Centre for pathology tests; and (iii) Renetech Lab for TLD services; were in the nature of providing "technical and professional services" and TDS ought to have been deducted under Section 194J instead of Section 194C of the I.T. Act. In other words, for A.Y. 2011-12, after analysing six AMCs, the CIT (A) held that the three AMCs were of a routine nature and TDS was rightly deducted under Section 194C, whereas the balance three AMCs were of a specialized nature which required deduction of TDS under Section 194J.

18. As mentioned earlier, being aggrieved by the decision of the CIT(A) on this issue, for A.Y. 2007-08 to 2010-11, the Revenue approached the ITAT. The ITAT, for A.Y. 2007-08 to 2010-2011, confirmed the view of the CIT(A) and held in favour of the Assessee. Since the Revenue partly succeeded on the issue of AMCs for A.Y. 2011-12, this issue did not arise in A.Y. 2011-12. Also, the Revenue or the Assessee did not file any appeal from the order of the CIT(A) for A.Y. 2011-12 on this issue.

19. The findings of the ITAT on the issue of payments made under the AMCs can be found from paragraphs 4 to 6 of the impugned order. The ITAT noted that the Assessee - Hospital has been entering into AMCs in respect of its equipment like X-ray machines, HD Dialog dialysis machine, CT Scanner, Olympus endoscopes, MRI Scanner Magnetom Symp/Somantom Sense etc, and is making payments and deducting TDS under Section 194C of the IT Act. The Tribunal also noted that in earlier orders, the Revenue has never raised this issue and accepted the position of the Assessee. In other words, in earlier years also the Assessee has been entering into these AMCs, and whilst making payments thereunder, have been deducting TDS under Section 194C and it has never been objected to by the Revenue.

20. After going through the impugned order, we find that the Tribunal only reproduced what has been stated by the CIT(A) in the order impugned before the ITAT and has not independently analyzed the AMCs which were the subject matter of the Appeals for A. Y. 2007-08 to A. Y. 2010-11. We say this for two simple reasons. Firstly, the ITAT is the last fact-finding authority and ought to have independently examined the AMCs and thereafter come to the conclusion whether each of those AMCs were such where "technical" or "professional" services were being rendered to the Trust, or otherwise. It is only once this analysis was done could the Tribunal come to the conclusion whether TDS ought to have been deducted under Section 194C or 194J of the I.T. Act. Secondly, in the facts of the present case, for the A.Y. 2011-12, another CIT (A), by his order dated 26th November 2013, in fact differed from his predecessor and held that three out of the six AMCs were such that warranted deduction of TDS under Section 194J instead of Section 194C. In other words, he held that the services rendered under three AMCs were in the nature of "technical services". We are, therefore, of the view that the ITAT ought to have independently analyzed each AMC and given its finding thereon. This has not been done in the impugned order. Since the ITAT is the last fact-finding authority, we are of the view that the order of the ITAT on this issue, namely, whether the AMCs entered into by the Petitioner Trust with its vendors were really for rendering any "technical services" ought

to be set aside and the matter remanded to the ITAT for fresh consideration. As mentioned earlier, this issue will arise only for A. Y. 2007-08 to A.Y. 2010-11. This issue does not arise in A.Y. 2011-12 since the Revenue partly succeeded on this issue and the Revenue or the Assessee has not challenged the order of the CIT (A) dated 26th November 2013 [for A.Y. 2011-12].

21. In view of the foregoing discussion, the above Appeal is disposed of in the following terms:

(a) As far as Question (A) is concerned, the same does not give rise to any substantial question of law. Hence, the Appeal is dismissed qua Question (A);

(b) As far as Question (B) is concerned, the order of the ITAT is hereby quashed and set aside and the matter is remanded to the ITAT for it to re-examine the AMCs entered into by the Petitioner Trust with its vendors for A.Y. 2007-08 to A. Y. 2010-11 and thereafter give a finding whether TDS ought to have been deducted under Section 194C or 194J of the IT Act. All contentions of the Assessee as well as the Revenue on this issue are expressly kept open to be agitated before

the ITAT.

(c) As far as Question (C) is concerned [i.e. whether the Assessee is an Assessee in default], insofar as it relates to Question (A), the same naturally would not survive because we have already held that Question (A) does not give rise to any substantial question of law. However, whether the Assessee is an Assessee in default for wrongly deducting tax under Section 194C instead of Section 194J, would necessarily depend on the findings given by the ITAT on the issue of AMCs, once it re-examines the matter.

22. All the above Appeals are disposed of in the aforesaid terms. However, in the facts and circumstances of the present case, there shall be no order as to costs.

23. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**