

## **Consultant Doctors are not 'Employees': Hospitals need to deduct TDS on payment of Professional Fee, rules ITAT**

### **Fact of the Case**

- The assessee hospital paid an aggregate amount of Rs.11.17 Crores to full time consultant doctors as professional fee. According to the TDS Officer, as this was on the premise that there was no employer-employee relationship between the assessee and full-time consultant doctors, such payments are subject to deduction of applicable tax at source in terms of requirements of section 194J.
- The consultant doctors were paid based on the services rendered by them and on the basis of doctors' fees collected by the hospital from the patients. The same is evident from the fact that the payment made to these doctors vary significantly in each month. This was so because fees payable to them was linked to services rendered and patients attended to by them during the relevant period.

### **Decision of the Case**

- Upholding the order Justice P.P. Bhatt and Accountant Member Manoj Kumar Aggarwal held that "it is also a fact that there was no specific timing and attendance record maintained by hospital with respect to such doctors and this category of doctors was not be eligible for any leave, provident fund, gratuity, bonus etc. and were not subject to admission or retirement from services.
- They were not entitled to several benefits as allowed to regular employees such as medical reimbursement. Insurance, leave encashment etc. All these facts and features would bolster assessee's claim that there was no employer-employee relationship between the assessee and consultant doctors. Therefore, the tax was rightfully deducted u/s 194J.
- In a significant ruling for the doctors and the hospitals, the Mumbai bench of the Income Tax Appellate Tribunal (ITAT) held that the payment made by assessee hospital to certain consultant doctors would require deduction of tax at source under section 194J of the Income Tax as applicable to professional payments and not under section 192 as applicable to salaried employees.