IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER & SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.2836/Del/2025
(Assessment Year:2017-18)

DCIT, Circle-73(1), Room No.413, 4th Floor, Aayakar Bhawa, Laxmi Nagar, Delhi	Vs.	M/s Agilus Diagnostics Ltd, 306, Tower A, Unitech Cyber Park, Sector 39, Gurugram 122002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACS 2809 J		
Appellant	..	Respondent

Appellant by :	Sh. Devashish Jain, Adv & Sh. Dhananjai Dhokalia, Adv & Sh. S. Shriram, Adv
Respondent by :	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	27.01.2026
Date of Pronouncement	04.02.2026

O R D E R

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the department against the order dated 18.02.2025 of the Ld. Commissioner of Income Tax, Appeal Addl/JCIT (A)-4 Bengaluru (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in DIN & Order No: ITBA/APL/S/250/2024-25/1073386062(1) arising out of the order dated 22.06.2018 u/s 201 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the ACIT Circle 77(1), Delhi for AY: 2017-18. The revenue has raised following grounds;

2. On hearing both the sides the relevant factual background is that the Respondent assessee is engaged in the business of establishment, maintenance and management of clinical reference laboratories in India and employs various doctors on its rolls ('Salaried doctors') for the provision of such clinical services. Further, to provide a wider variety of medical consultancy services, the Respondent separately engages specialized doctors as full-time consultants (FTC) and part-time consultants (PTC) (collectively referred to as Consultants"). Considering the contractual arrangement with Salaried doctors and Consultants, the Respondent deducted tax at source ("TDS') under Section 192 of the Income-tax Act, 1961 ('IT Act') while making salary payments to Salaried doctors and under Section 194J of the IT Act while making payment of professional fees to the Consultants. During the AY under consideration, ACIT, Circle 77(1), Laxmi Nagar, New Delhi ('AO'),

conducted a survey at the Respondent's business premises on 08.12.2017 to verify the compliance with TDS provisions. During the course of the survey, statements of several of the Respondent's personnel were recorded. Based on the statements recorded during survey proceedings and the subsequent correspondence, the Ld. AO issued a show cause notice ('SCN') dated 28.03.2018 under Section 201(1) or (1A) of the IT Act. The Ld. AO, vide the said notice, asked the Respondent to show cause as to why payments made to Consultants should not be treated as salary and be made subject to TDS under Section 192 of the IT Act. The Respondent, in its response dated 17.04.2018 to the SCN, duly submitted that in the absence of any employer-employee relationship between the Respondent and the Consultants, the TDS has been rightly deducted under Section 194J of the IT Act. The Respondent in this regard placed reliance on various clauses of the contractual agreements transacted with the Consultants. However, the Ld. AO passed impugned order dated 22.06.2018 under Section 201(1)/201(14) of the IT Act, treating the Respondent to be an 'assessee in default for deducting TDS on payments made to Consultants under Section 194J of the IT Act instead of Section 192 of the IT Act, thereby raising a demand of Rs. 1,00,83,568/- . Separately, penalty proceedings were also initiated against the Respondent on account of such alleged short deduction of TDS.

3. Aggrieved by the above-said order, the Respondent filed an appeal before the Commissioner of Income-tax, Appeals, Circle-33(1), Delhi and during the course of the CIT(A) proceedings, the affidavits of two Consultants, namely, Dr. Neeraj Prakash and Dr. Hemant Yadav, were submitted vide application for additional evidence dated 21.02.2019. The said affidavits were submitted to provide clarity on the statements recorded by the Ld. AO during the course of the survey. The Ld. CIT(A), in view of the additional evidence submitted by the Respondent, sought a remand report from the Ld. AO. The Ld. AO vide remand report dated 05.12.2019 reiterated the contents of the Original Order. Aggrieved by the same, the Respondent submitted a rejoinder to the said remand report vide submission dated 06.03.2020. (Available at Pages 32 to 47 of the Paperbook). Subsequently, the Respondent's case was transferred to a new Commissioner of Income-tax (Appeals) under Section 246(2) of the IT Act, who thereafter passed an Order dated 18.02.2025 (Impugned Order) under Section 250 of the IT Act. The Ld. CIT(A), after considering the Respondent's contractual arrangement with the Consultants, set aside the demand raised by Ld. AO vide the Original Order, thereby confirming that the Respondent's practice of deducting TDS on payments made to Consultants under Section 194J of the IT Act was correct as per law. Aggrieved by the Impugned Order, the department preferred the present appeal raising following grounds;

"1. Whether on the facts and in the circumstances of the case, the Ld. Addl./JCIT (A)-4 Bengaluru has erred in deleting the demand raised u/s 201(1)/201(1A) on account of short deduction of tax at source (TDS) by the Deductor Company on payments made to retained doctors liable for TDS u/s 192.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that as per the nature of work of Retained doctors/Full time consultants, TDS should have been made u/s 192 at the prescribed slab rates for the respective financial year.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that as there was complete control of employer (deductor) over the consultants (deductees) and there was employer-employee relation between them.

4. That, the appellant craves to add, amend, modify and delete any of the grounds of appeal before or at the time of hearing."

3. Ld. DR has though relied the impugned assessment order however what we find is that the Ld. CIT(A), in Paras 4.1.3 of the Impugned Order, has taken into account the remand report and observed as under;

"4.1.4 On perusal of the agreement between the Appellant and the consultant doctors it is observed that the same is an agreement for rendering of consultancy services. The doctors are appointed as consultant for a fixed period on payment of consultancy fees. The consultant doctor has a right to admit patient and recover hospital bills from them. However, they are bound by certain administrative rule which is required for the purposes of maintaining discipline, regularity and accountability to the patients. Further, the relationship between the Appellant company and consultant is that of principal to principal and it is clearly understood that this agreement does not create any employer-employee relationship between the Company and the Consultant

*****

4.1.7. ……Merely because the doctors have to report to an authority and apply for leave does not in itself establish any employer-employee relationship. It is but natural for any entity engaging a consultant to keep certain level of supervision and some degree of administrative control over its retainer doctors to ensure that they work properly. It is equally important for the Appellant to administer supervision and control over their retainer doctors as much as they do for their regular employee-doctors to ensure that they deliver as per the terms and conditions of the

contract. Thus, it is only for the purpose of discipline and adherence to the timings that the consultant doctors are required to report for certain number of hours at the hospitals. The same explanation goes for the leave rules as well……."

4. We are of the considered view that the ld. AO had fallen in error to distinguish between contract "for service" and "not of service", which ld. CIT(A) has duly considered. Ld. CIT(A) has rightly relied the consultancy agreements, which made it evident that the Consultants act in their independent professional capacity while providing the concerned medical consultancy and advisory services since the parties operate on a 'principal to principal' basis. Further, the Consultants possess complete discretion for determining the manner of providing their services to the Respondent or its patients and are further governed solely by the terms and conditions stipulated in their respective consultancy agreements. Supervision of a service provider, such as reporting to any authority specified in their agreements, fixed hours and days of work, restriction on engaging with any other hospital /clinic or undertaking private practice during hours scheduled with Respondent, approval of leaves etc are merely for ensuring enforcement of terms and condition or to invoke penalty provision and same do by metamorphosis transform contract "for service" to one "of service". Our conclusion are duly supported by decision **CIT (TDS) v. Apollo Hospitals International Ltd., reported at [2014] 44**

taxmann.com 368 (Gujarat) ; DCIT v. Fortis Hospital Ltd., ITA No. 241/Del/2023.

5. In any case when Consultants have already offered the professional income to income-tax while filing their income tax return(s) Accordingly, the Respondent cannot be considered as an 'assessee in default' on the basis the Proviso attached to Section 201 of IT Act. Reliance in this regard can be placed on Hindustan Coca Cola Beverage P. Ltd. v. CIT, reported at (2007) 8 SCC 463; ITO v. Alfred Allan Advertising, reported at [2006] 8 SOT 312 (Delhi); CIT (TDS) v. D.P. Vekaria, reported at [2014] 48 taxmann.com 249 (Guj).

6. Grounds raised have no substance. The appeal of revenue is dismissed.

Order pronounced in the open court on 04.02.2026

Sd/-	Sd/-
(Manish Agarwal)	(Anubhav Sharma)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated 04.02.2026
Mittali, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI