

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,
MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

&

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

**ITA No.4666/M/2025
(A.Y. - 2018-19)**

**ITA No.4665/M/2025
(A.Y. -2020-21)**

State Health Society Maharashtra 3 rd Floor, Arogya Bhavan, St. George Hospital Compound, Mumbai – 400001, Maharashtra	v/s. बनाम	Assistant Commissioner of Income Tax – TDS, Circle 2(2) Cumballa Hill, MTNL Telephone Exchange Building, 3 rd Floor, Peddar Road, Dr. Gopalraw Deshmukh Marg, Mumbai – 400026 Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AACAS8907R		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Nishit Gandhi, Adv.
Respondent by :	Shri Vivek Perampurna(CIT DR) (virtually appeared) & Ms. Kavitha Kaushik, Sr. DR (physically appear)

Date of Hearing	22.01.2026
Date of Pronouncement	09.04.2026

आदेश / O R D E R

PER BENCH:-

The above captioned appeals have been filed by the assessee against two separate orders as passed by the Learned Commissioner of Income-tax, Appeal, ADDL/JCIT(A), Panchkula [hereinafter referred to as “CIT(A)”] pertaining to order passed u/s. 201/201(1A) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Years 2018-19 and



2020-21. Since the issues involved are common and also the fact that appeals were heard together, they are being taken up for adjudication vide this composite order for the sake of brevity.

2. The grounds of appeal are as under:-

ITA No.4666/MUM/2025(AY 2018-19)

REVISED GROUNDS OF APPEAL

1. *In the facts and in circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) [the “Ld. CIT(A)” for short] erred in partly confirming the action of the Learned Assistant Commissioner of Income Tax-TDS [the “Ld. AO-TDS” for short], in levying interest under section 201(1)/201(1A) of the Income Tax Act, 1961 [the “Act” for short].*
 - 1.2 *While so confirming, the order of the Ld. AO, the Ld. CIT(A) failed to appreciate that:*
 - i. *The Appellant, in fact had no liability to deduct TDS u/s 194J of the Act based on the very findings/observation of the Ld. AO-TDS;*
 - ii. *The Appellant had rightly deducted TDS under the correct section being S. 194C of the Act under a bona fide view;*
 - iii. *The Ld. CIT(A) himself has held that the Assessee is not an Assessee in default in terms of section 201 of the Act and therefore the interest u/s 201 of the Act could not have been levied;*
 - iv. *In any case, there is no loss to the Revenue and therefore there is no question of levying interest u/s 201 of the Act since the parties to whom the payments have been made have admittedly discharged their tax liability along with applicable interest thereon u/s 234B/234C of the Act which is equal to the rate prescribed u/s 201 of the Act; and,*
 - v. *Collecting interest u/s 201 from the Appellant again for the very same tax already recovered from the recipient parties would amount to unjust enrichment which is clearly impermissible.*
 2. *In the facts and in circumstances of the case and in law, the Order passed by the Ld. CIT(A) is unsustainable and void primarily because in the present appeal the*



*Ld. CIT(A) was not empowered to render a finding adverse to the assessee, in the absence of any adverse finding by the Ld. AO on the Contracts with **HLL Lifecare Labs Ltd. and Faber Sindoori Management Services Ltd.**, since the present Appeal is not against the quantum of assessment or the assessment proceeding per se and the Ld. CIT(A) has no power of enhancement in such cases*

3. *In the facts and in circumstances of the case and in law, the interest u/s 201 of the Act levied by the Ld. AO-TDS and as partly confirmed by the Ld. CIT(A) deserves to be deleted and it is prayed accordingly.*

ITA No. 4665/MUM/2025 (AY 2020-21)

GROUND NO. 1::

1.1. *On the facts and in the circumstances of the case and in law, the ld. ADD/JT. Commissioner of Income tax (Appeals)-("Ld.CIT(A)", Panchkula vide order dated May 21, 2025 under section 250 of the Income tax Act, 1961 ("the Act") erred in confirming the action of the Asst. Commissioner of Income tax, TDS Circle 2(2), Mumbai ("Ld. AO") in treating the Appellant as an Assessee in default for non-deduction of tax at source under section 194J of the Act in relation to payments made to **BVG India Ltd., HLL. Lifecare Limited and Faber Sindoori Management Services Pvt. Ltd.***

1.2. *The Appellant prays that the Appellant not be treated as an Assessee in default under section 201(1) and 201(1A) of the Act and the deduction of tax at source made by the Appellant under section 194C of the Act be upheld.*

3. Brief facts of the case are that the assessee is a Maharashtra government authority implementing and monitoring centrally sponsored National Health Mission in Maharashtra and for this purpose, the assessee entered into contracts with three different parties in this regard to carry out such work. The only dispute in the grounds of appeal revolves around the applicability of particular section under which Tax Deduction of Source (TDS) was required to be deducted by assessee while making payments to them.



The assessee made TDS u/s 194C of the Act treating the work as Contract while the AO considered that same as professional services liable to be deducted u/s 194J of the Act and passed consequent orders u/s 201(1) and 201(1A) of the Act which is the point of discord in the instant appeal.

Following contracts were entered into on behalf of the State:

- a. **BVG India Ltd(BVG)** to provide emergency ambulance services;
- b. **HLL Lifecare Ltd.(HLL)** to provide services in relation to collection, storage, transportation and reporting of blood samples for various blood tests conducted on the public admitted in Government run/ aided Hospitals;
- c. **Faber Sindoori Management Services P. Ltd.(FSMS)** to provide for Annual maintenance and upkeep of the bio-medical equipments used in the said Hospitals or PHC, RHS, SDH & Civil Hospital in each district of Maharashtra State.

3.1 According to the order passed u/s 201(1) and 201(1A) of the Act, on verification of the bills/invoices/agreements submitted by the assessee, it was noticed by the AO that such services were of professional nature, thereby attracting provisions of section 194J of the Act. However, the assessee had deducted tax at source treating the payments as payments to contractor u/s. 194C of the Act. Hence, to determine the tax payable on account of defaults of short-deduction of TDS u/s. 201(1) and on the part of interest payable u/s. 201(1A) of the Act, show cause notice was issued. After duly considering the



details and submissions, main conclusions arrived at by the AO are narrated as under:

- In respect of short deduction of TDS on payment made to 'FSMS' and 'HLL' for emergency medical response services with fleet of advanced life support (ALS) ambulance & basic life support (BLS) ambulances @ 2% instead of applicable rate of 10% u/s 194J of the Act, it was observed that the assessee had deducted TDS u/s, 194C @ 2% on the payments made towards providing emergency medical response services with fleet of advanced life support ambulance & basic life support ambulances whereas the said services were covered under the provisions of section 194J attracting TDS rate of 10%.
- The AO examined the provisions of sections section 194C and 194J of the Act qua the agreements of the above contracts. The assessee entered into an agreement with FSMS and HLL on 01.04.2014. On perusal of the agreements, it was noticed that the main objective of the agreement was to provide comprehensive emergency response services to the entire population of Maharashtra. The service provider shall develop and operationalize the Emergency Response Service by providing comprehensive range of service extending through both pre and in hospital emergency medical services. In scope, it was stated that the service provider shall set up the Emergency Response Centre (ERC or Control Room) for running Advanced Life Support & Basic Life Support Ambulances (ALS & BLS) to provide 24 hours per day and 365 days a year basis pre-hospital emergency response services accessible to all, through a 24 hour toll free number 108. The service provider shall use latest technology and skilled manpower to perform Services.
- In Roles and Responsibilities, Obligations, it was stated that the service provider was required to set up Control Room/ Emergency Response Centre (ERC) of world class standards. The service provider was required



to bring in technology and service excellence and work towards improving delivery of emergency response of global standards over a period of time. Service provider shall equip all the 233 Advanced Life Support & 704 Basis Life Support Ambulances (ALS & BLS) with Global Positioning System receivers and with two active mobile telephone connections.

- The service provider was required to ensure that in every ambulance operated under this scheme, at least one Pilot and one Emergency Medical Technician (EMT) shall be present at any given point of time to provide patient- stabilization, first aid and other pre hospital care.
- All Advanced Life Support (ALS) ambulance should have Emergency Medical Technician at any given time. The basic minimum qualification of the Emergency Medical Technician (EMT) to be appointed by the service provider shall be Registered Medical Practitioner (RMP) from recognized university and shall be registered particular with the Medical Councils in Maharashtra for both ALS and BLS life Support ambulances.
- The service provider was required to recruit, train and position the required man power Including Pilots (drivers) and Emergency Medical Technicians (EMT) who will be present in the ambulance while shifting an emergency case to a hospital.
- The service provider was required to furnish monthly bills ambulance wise proof of attendance of Emergency Medical Technicians (EMTs). The ALS and BLS life Support Ambulances were required to be of specific design attached with specific medical equipment and medicines.
- After considering facts of the case, it was clear that the assessee provided service of nature of technical and professional services which falls u/s 194J of the Act.
- He placed reliance on the decision in *ITO vs. Accounts Officer, Govt. Medical College, Jammu* (2014) 146 ITD 648/(2012) 22 taxmann.com 149 (Asr.) (Trib.) where on similar issue of maintenance of operation theatre and surgical equipment's system, tax to be deducted as per provisions of the Act was involved. The assessee, a medical College, entered into



contracts with various parties to maintain operation theatre and surgical equipments, RO system, CT scan machine, MRI machine, medical equipment lift sterilisation and as well as to provide services of anti-termite treatment. It was held that all these services could not be provided in routine and normal manner but required technical expertise or professional skills and therefore, the provisions of section 194J were attracted to those contracts.

- The AO also referred to the situation involving TPA'S who are liable to deduct tax under section 194J on payment to hospitals on behalf of insurance companies. The CBDT has, through Circular No.8/2009 dated 24.11.2009, clarified that TPAs (Third Party Administrator's) 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 under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAS to hospitals etc.
- Basic Life Support (BLS) Ambulance is a vehicle ergonomically designed suitable equipped and appropriately staffed for the transport and treatment of emergency patients requiring invasive or non-invasive airway management with basic or advanced monitoring. In the instant case, each of these ambulances had sophisticated medical equipment, medicines and Emergency Medical Technicians which should be a Registered Medical Practitioner (RMP).
- Therefore, these ambulances could not be classified as a patient transportation vehicle with first aid medicines but classified as a 'mini hospital on wheel' with doctor, medicines and necessary medical equipment. They were designed to manage first few critical hours of the patients.



- Further, for invoking provisions of section 194J of the Act of the Act, there was no stipulation that the professional services have to be necessarily rendered to the person who made payment to hospital. Therefore TPAs (Third Party Administrator) who were making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless schemes were liable to deduct tax at source under section 194J on all such payments to hospitals etc. Similarly, the payments to the service provider fell under the purview of section 194J and not 194C of the Act.
- As far as assessee's contention that the deductees must have filed return and paid taxes thereon which can be verified by the Department, was not acceptable as the statutory provisions, the assessee was required to submit Form 26A. As per the statutory provisions, it is the responsibility of the deductor/assessee to submit Form 26A duly verified along with proper supporting documents to avail benefit of proviso to section 201(1) of the Act. It was not for the department to go to the payee and verify its accounts, status of return of income and tax paid thereon. However, during the course of the assessment proceedings, the assessee was provided a copy of blank Form 26A and asked to submit it after getting duly verified by the payee. The assessee had not replied.
- The AO further observed that the proviso to section 201(1) of the Act along with Rule 31ACB of the Income tax Rules, 1962 lays down conditions and procedures to be followed for not deeming an assessee in default. Rule 31 ACB : Form for furnishing certificate of accountant under the first proviso to sub-section (1) of section 201. As per CBDT notification no. 11/2016, Form No 26A could be furnished in paper format with the TDS Assessing Officer upto AY 2016-17 and for AY 2016-17 and onwards, Form 26A could be filed in electronic format with CPC TDS.
- The assessee did not submit any certificate from an Accountant of the deductee as envisaged in Rule 31ACB in spite of providing copy of Form 26A, even during the course of assessment proceedings. Therefore, the



contention of the assessee in respect of not treating the assessee in default was rejected and it was not eligible to get benefit of proviso to section 201(1) of the Act.

- Moreover, the assessee admitted that the TDS in previous years was not deducted at prescribed rate and it had already started to deduct TDS @10% from such transactions and deducting TDS 10% now.
- Accordingly, it was held that the assessee was required to deduct tax at source @ 10% on payment made to FSMS and HLL which fell under the purview of head “technical and professional services” u/s. 194J of the Act. However, the assessee defaulted by not deducting TDS @ 10% and thus, to the extent of short deduction of 8% (10% less 2%) of the consideration, the assessee was held as assessee in default u/s 201(1) of the Act.

4. Aggrieved, the assessee preferred appeal before the appellate authority contesting the action of the AO holding the assessee as ‘assessee in default’ on account of short deduction of tax at source. According to the Id. CIT(A) section 194J of the Act mandates deduction of tax at source at a higher rate on payments made for “*fees for professional services or technical services*” and as per the Explanation to Section 194J, “*professional services*” include services rendered by persons in the medical, legal, engineering, architectural, accountancy professions, or other professions notified by the Board. The term “*technical services*” encompasses services requiring expertise in a technical field. On the other hand, section 194C of the Act applies to payments made under a contract for *carrying out any work, including supply of labour*. The definition of “work” under Explanation (iv)



includes carriage of goods (excluding rail transport) and excludes professional or technical services as defined in Section 194J of the Act.

4.1 Before him, the assessee made a detailed submission which has been reproduced in the appellate order. It was argued that the services provided by HLL were largely logistical in nature including the collection, transportation, storage, and analysis of blood samples and should, therefore, fall under Section 194C of the Act. However, a closer examination revealed that the core of HLL's services was actually medical diagnostic testing. This type of work fundamentally depended on the expertise of qualified professionals like pathologists, biochemists, and microbiologists. Both the Agreement and Recital (iv) clearly stated that test reports must be signed by such professionals whose qualifications are recognized by the Medical Council of India. This requirement alone strongly supported the conclusion that these are "professional services" as defined in Explanation (a) to Section 194J of the Act. He observed that appellant's attempt to re-frame these services as mere logistics by isolating individual steps in the process, is not convincing. The collection and transport of samples were simply supporting activities that serve the main objective, which was to produce medically reliable diagnostic reports. These reports required expert interpretation and professional judgment's. The essential character of the service, which



remained medical diagnostics. As such, the provisions of Section 194J of the Act clearly applied.

4.2 In respect of the payments made to FSMS, it was claimed that these were for annual maintenance of medical equipment, which constituted routine maintenance and should fall under Section 194C of the Act, relying on the decisions of the Hon'ble Mumbai Tribunal in ITO vs. Dr. Balabhai Nanavati Hospital (167 ITD 178) and DDRC SRL Diagnostic P. Ltd. vs. ITO (TDS) (157 ITD 92). The Id. CIT(A) in this regard observed that maintenance of sophisticated biomedical equipment required specialized technical knowledge and expertise. While some aspects might involve routine upkeep, the overall service of ensuring the functionality and performance of such critical medical equipment was inherently technical in nature and fell within the definition of "professional services" under Section 194J of the Act. Maintenance of specialized medical equipment goes beyond mere routine tasks and involves technical intervention and expertise. The Appellant's attempt to distinguish this case by stating that FSMSPL carried out "routine maintenance only" was a bald assertion unsupported by any cogent evidence. The agreements and invoices suggested a more comprehensive maintenance service for critical biomedical equipment.

4.3 The argument of the assessee that it was merely routing payments on behalf of the Government of Maharashtra (DHS) and was not the actual



service recipient was also not sustainable. The agreement was between the assessee and HLL/FSMSPL, and it was directly responsible for making the payments. The fact that the ultimate beneficiary of the services was the public and the government might be reimbursing the Appellant did not absolve the assessee of its obligation to deduct TDS under the appropriate section of the Act. Accordingly, he concluded that the assessee was liable to deduct tax at source u/s 194J of the Act on payment made/credited to these concerns.

4.4 In respect of interest charged u/s 201(1A) of the Act, the assessee contended that the Form No. 26A could only be obtained after the assessment proceedings were completed. The purpose of obtaining Form No. 26A was to demonstrate that the revenue had not suffered any loss due to the alleged short deduction of TDS, as the deductees had already paid tax on the income. The Id.CIT(A) noted that this was a relevant piece of evidence that ought to be considered for a just determination of the appeal, particularly with respect to the chargeability of default under Section 201(1) of the Act. Therefore, in the interest of justice and to enable a comprehensive adjudication of the issue, the application for admission of additional evidence, being Form No. 26A was allowed. According to him, the admitted additional evidence, being Form No. 26A, prima facie indicated that the deductees, HLL and FSMSPL, had offered the income related to the payments made by the assessee in their returns of income for the relevant assessment year. These forms were certified by



Chartered Accountants and provided details of the income offered and the tax paid by the deductees. Therefore, he observed that as the deductees appeared to have discharged their tax liability on the income in question, the assessee could not be held to be an assessee in default under section 201(1) of the Act. Therefore, even though it was not held to be an assessee in default under Section 201(1) due to the deductees having paid the tax, it was liable to pay interest under Section 201(1A) of the Act for the period of delay in deducting the tax at the correct rate under the appropriate section. The AO was accordingly directed to compute the interest payable by the assessee under Section 201(1A) of the Act. The period for which the interest was to be calculated would be from the date on which the tax was deductible to the date of filing of respective returns of income by HLL and FSMS, for the relevant assessment year, as evidenced from Form No. 26A.

5. Before us, the ld. AR has made detailed oral as well as written submission. In so far as the agreement with BVG is concerned, it was submitted that the AO himself accepted the deduction of tax at source u/s 194C of the Act in respect of contract with BVG India Ltd. for AY 2018-19 and therefore, there was no reason to take a different view for this AY 2020-21. Further, the contract with BVG had been entered since 2014 and no such action for short deduction of tax had been taken on the issue by the Revenue for the earlier years.



5.1 It was further submitted that the contract with BVG was primarily for the carriage of patients by ambulances to nearest hospitals. However, the AO treated these payments as fees for professional services simply on the ground that as per the contract, the ambulance should also be equipped with an Emergency Medical technician (EMT). However, it was claimed that the presence of a technician in the ambulance was only ancillary and incidental to the main purpose of transportation of patients. The payment terms further supported this position since the payments were made on the basis of a fixed rate per ambulance per month calculated with reference to 2,000 km. per month per ambulance and for any extra kilometres run the compensation is at Rs. 6 per km, and not on the basis of (i) per patient transported, (ii) per treatment rendered, or (iii) per service performed.

5.2 It was contended that he completely erred in assuming that the EMT's were the same as doctors. There was a significant and marked difference between the emergency medical technician and a full-fledged qualified doctor. The only reason for treating the payment made by the assessee to BVG India as professional Services was because of this misconception of the AO. Further, the salary of the technicians was also paid directly by BVG India Ltd. and not by the assessee. Therefore, what the assessee received under the contract was merely a carriage service, i.e., transportation of patients (passengers). Whether BVG deputed a technician



or not, did not alter the dominant nature of the contract, which remained that of carriage of patients akin to the presence of a guide provided by a tour company providing an expert guide along with tour bus. Similarly, the carriage of patients with a technician could not be construed as a rendition of professional service.

5.3 In respect of contract with HLL, it was submitted that the contract with it was of a composite nature, covering a host of activities such as collection of samples, transportation of samples, storage of samples, delivery of samples and testing/reporting on the samples. Basically, HLL was providing a set up for collection of samples, transportation of samples, storage of samples and finally reporting on the samples to various Primary Health Centres (PHC), Rural Health Centres (RHC), Sub-District Hospitals (SDH) and Civil Hospital. which were functioning aided under by the Maharashtra Government. The purpose of the contract was to make available a set-up/facility for collection, transportation and delivery of samples. Testing and reporting were only one of the components of the overall arrangement. The AO gave undue weightage to only one aspect reporting on the samples. It was further stated that HLL was liable for penalties in case of damage, delay. or improper handling of samples which reinforced the fact that the contract was essentially composite in nature rather than treating it as a single profession.



5.4 It was contended that the AO did not consider the possibility that HLL would have already offered income on mercantile basis when the invoices are raised and after a lapse of 1 or 2 years the payments were made by the assessee which were then recorded in the assessee's books. As such, for these payments, there was absolutely no scope of a default in deducting TDS since it was quite possible that the income is offered by HLL earlier and the TDS was made by the assessee later.

5.5 As regard the contract with FSMS, it was submitted that it pertained to the operation and maintenance of hospital equipments such as beds, stretchers, related infrastructure and other bio-medical equipments, etc. The AO based his order simply on his reading of the contract with BVG and has not considered the contract with FSMS. Further, the contract specifically provided for an upkeep and maintenance of the various bio-medical equipments used in the government hospitals. On the payments for this maintenance, TDS was duly deducted under section 194C of the Act. The AO erred in not considering that the primary purpose of the arrangement/contracts was to provide a routine maintenance and upkeep of the bio-medical equipments which did not involve technical professional services. Technical services rendered, if any, were only when there was a breakdown of any bio-medical equipments which would then require technical expertise. However, this aspect of the matter was not considered by



both the lower authorities which was akin to the maintenance contract with a car service garage, which undertakes maintenance and upkeep of vehicles, as well as office maintenance contract where personnel are engaged to keep office equipment like tables, printers, air conditioners, etc. in working condition. Such maintenance contracts are not considered as professional services liable for TDS u/s 194J of the Act though these would also have to be treated as rendering professional services and liable for TDS u/s 194J based on the logic adopted by the lower authorities. At the most, such repairs could be treated as provision of technical services. The AO erred in concluding that the maintenance of hospital equipment amounts to rendition of professional services merely because the equipment was used in a hospital environment and had considered the technical repairs of such an equipment as equivalent to routine maintenance.

5.6 Without prejudice to the above contentions, it was argued that the assessee had acted under a bona fide belief that the contracts were covered by section 194C of the Act and deducted tax at source accordingly. It is a settled law that when there are two equally possible views, then the view favouring the tax payer must be adopted. Reliance was placed on CIT vs Naga Hills Tea Co. Ltd. (1973) 89 ITR 236 (SC).

5.7 It was further pleaded that there was no loss to the Revenue, in as much as all the payee parties have duly offered the corresponding income to



tax in their respective returns and paid tax thereon, in fact by way of advance tax. In this regard the following observations of the Hon'ble Jurisdictional High Court in the case of CIT w/s Kotak Securities Ltd. (2012) 20 taxmann.com 846 (Bombay) are relevant, wherein it has been held that no adverse inference should be drawn against the assessee acting under a bona fide belief, particularly where there is no revenue leakage.

5.8 It was also pleaded that the payments made by any Central or State government in respect of a contract including a contract for supply of labour or for carriage of goods, are specifically covered u/s 194C of the Act. It is an undisputed fact that the appellant has entered into contract with each of the three parties. It is also a fact, admitted by the AO himself that the assessee is a Department of the Government. Therefore, in terms of the specific provisions providing for tax deductions at source in respect of a contract, it correctly deducted TDS under section 194C of the Act in respect of the payments made to these parties as stated above.

5.9 The dominant purpose of these contracts is to provide a set up by which the government can carry out its essential function of providing health and family welfare services to the public at large across the state of Maharashtra. The payments made to these parties were in the course of carrying out such government functions. Therefore, the payments made to the contractors were in respect of services rendered to the public at large and



not the assessee. As such, it was submitted that the payments were in respect of comprehensive contracts involving multiple facets and therefore, the assessee had correctly deducted tax at source u/s 194C of the Act.

5.10 As far as the contract with HLL is concerned, it is submitted that, HLL is a company and not a doctor/medical professional so as to render professional services. As per Clause 4(e)(iii), pg. 86 of the Contract with HLL, it is explicitly mentioned that HLL shall provide reports from qualified pathologists. It is nowhere mentioned in the contract that HLL shall report or certify the report of pathological examination. In fact, it is the doctor/qualified pathologist who has personally analysed the pathological samples and is thereafter certifying the reports and not the company HLL. Therefore, the agreement between HLL and the said doctor/qualified pathologist certifying the report can, if at all, be treated in the nature of professional services. The Appellant is not privy to this contract. However, the contract between the assessee and the HLL is in respect of multiple tasks which includes collection of pathological samples being urine, stools, etc., storage of pathological samples, transportation of pathological samples and ultimately delivery of pathological samples. It is only one limb of the entire services (reporting on samples) that can at all be considered in the nature of professional services. However, the Ld. CIT(A) has ignored all the other tasks and simply relying on this one limb of the contract held that TDS u/s 194J has



to be made. Further, these services are being provided by the doctors/pathologists and not by HLL personally. As such on a consideration of this aspect of the matter, it cannot be held that HLL is providing professional medical services at all. It is submitted that in a number of cases it has been held that collection, transport and disposal of bio medical waste is not liable to TDS u/s 194J i.e. Arihant Charitable Trust v/s ITO (TDS)-ITA 909/Ind./2019, ITO (TDS) v/s Gujarat Fluorochemicals Ltd. - ITA 1983 to 1985/Ahd./2012, et. al. Further, it has been held that where the contract is a composite contract, then merely because as per the AO, one portion of the said contract can be treated as rendering of technical services, it cannot be said that the contract is liable for TDS u/s 194J [Ref. CIT v/s Neyveli Lignite Corporation Ltd. (2000) 243 ITR 459 (Madras)] It must also be noted that the amounts paid by the assessee to HLL is per sample collected which is inclusive of all the above referred activities. Therefore, there cannot be doubt or dispute on the fact that the contract with HLL is also a composite contract. As far as collection of pathological samples, transport of pathological samples, storage of pathological samples and disposal of pathological samples are concerned, these activities are admittedly covered by section 194C of the Act in view of what is stated above. The only activity which could be treated as professional service is the reporting on the samples and for which there is a separate arrangement between the Doctors / Qualified pathologists and HLL.



5.11 It is further submitted that the AO has decided the issue based only on his reading of the contract with BVG without going into the details of the contract with HLL. The Id. CIT(A) was not empowered to render a finding adverse to the assessee, without confronting the same to the AO. As such, the matter would require fresh examination and must therefore be remanded back to the AO for afresh order.

5.12 The contract with FSMS is in respect of Maintenance of Bio-Medical Equipment used in Government Hospitals. The issue as to whether such a contract is liable for TDS u/s 194J or 194C has now been decided in favour of the assessee by the Hon'ble Jurisdictional High Court in the case of CIT v/s Asian Heart Institute and Research Centre (2019) 262 Taxman 395 (Bombay) affirming the order of the Hon'ble ITAT in DCIT v/s Asian Heart Institute-ITA 7051 to 7054/M/12 wherein it is held that such contract for maintenance of bio-medical equipment is liable for TDS u/s 194C. Similar view in an almost identical issue of TDS on maintenance of medical equipment was taken by the Hon'ble Jurisdictional High Court in the case of CIT (TDS) v/s Saifee Hospital-(2019) 262 Taxman 343 (Bombay). Also refer, Orbit Resorts WACIT-(2026) 183 Taxmann.com 728 (Del. Trib) holding that payments for annual maintenance contracts (AMC) of computers, DG set, elevators and telecommunication services involving routine and periodic maintenance, such payments constituted "work" under section 194C and not



fees for technical services under section 194J. The contract is for the maintenance of the equipment. However, it appears that the Ld. CIT(A) has based his conclusion on the assumption that the contract is only for repair of the equipment which has probably led to his averment that the contract involves technical intervention and expertise. In fact, the contract specifically states that FSMS will only be co-ordinating with the parties with whom the Appellant already has Annual Maintenance Contract regarding the equipments. It is only in case of damage to the equipment that FSMS may intimate the same to the Appellant or the NHM and only thereafter FSMS may undertake repairs of the same and on approval by the Appellant the cost of repairs are to be paid to FSMS. It is worth re-iterating that the AO has not even considered the Contract with FSMS and therefore, the order as passed by the CIT(A) affirming the order of the AO deserves to be reversed on this count. Further as per the contract with FSMS, they were required to ensure the maintenance of all the bio-medical equipments in the hospital which includes not only specialised equipments but all equipments in general i.e., all the assets of the hospitals in general. Secondly, as per clause I of the contract, the consideration for maintenance is a percentage of the total asset value and not on the basis of any specified professional service. As per the contract with FSMS, if any specialist or specialised work was needed to be done then they are to report it to the State Health Society, show them the nature of the



problem and if necessary appoint an outside engineer or appoint the engineers who are working on the rolls of FSMS to do the reparation, replacement and ultimate completion of work of the biomedical equipment. The other activities, like cleaning, upkeep, etc of the equipment cannot be treated as in the nature of professional service fees, because it can be done by anybody. This contract, specifically provided that for the equipment already covered under AMC or CMC, FSMS had to only do the work of co-ordination and maintaining records regarding the equipment. In case of equipments needing repairs, the same are to be repaired, if so approved by the Committee formed by the assessee. In such a scenario, the cost of repairs are to be paid to FSMS. This crucial aspect of the matter has been completely overlooked by the AO as well as the Ld. CIT(A) and therefore, the orders deserve to be set aside even on this count.

5.13 It is further submitted that the Ld. AO has decided the issue based only on his reading of the contract with BVG without going into the details of the contract with FSMS. The Ld. CIT(A) was not empowered to render a finding adverse to the Assessee, without confronting the same to the AO. As such, the matter would require fresh examination and must therefore be remanded back.

5.14 In the alternative and without prejudice to the above since the AO or the CIT(A) have not considered all the contracts in their entirety and in



fact the contract with the other two parties, HLL and Faber Sindoori has not been considered at all, it is prayed that all the three contracts be reverified, scrutinised and analysed by the Assessing Officer and thereafter, an opinion be formed as to whether the TDS is rightly deducted u/s 194C or 194J of the Act.

6. Per contra, the Id.DR has relied on the decision of the lower authorities.

7. We have given thoughtful consideration to the entire matrix of the case, heard rival submissions, the provisions of the law in this regard. We have also gone through the impugned agreements and the terms and conditions laid therein. In so far as the agreement with BVG pertaining to ambulance service is concerned, an inference which is palpable from the terms are that the assessee was engaged in rendering professional service as provided in section 194J of the Act by way of such service, which by no stretch of imagination could be considered akin to a work contract as per the provisions of section of 194C of the Act which are extracted as below:

Section 194J contemplates 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 48 [ten] per cent of such sum 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 3 [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 the monetary limits specified under clause (a) or clause (b) of [section 44AB](#) 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.] (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 (I) of [section 9](#);

[(ba) “royalty “ shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (I) of [section 9](#);

(c) where any sum referred to in sub-section (I) 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.”

7.1 We have examined the terms of agreement with the above stated parties. The AO duly analysed the terms and conditions laid down in the agreement with regard to ambulance service at length. It was submitted before us that the contract with BVG was primarily for the carriage of patients by ambulances to nearest hospitals. However, the AO treated these payments as fees for professional services simply on the ground that as per the contract, the ambulance should also be equipped with an Emergency Medical technician. However, the contention of the Id.AR lacks any merit in as much as Basic Life Support ambulance was a vehicle specifically designed suitably equipped and appropriately staffed for the transport and treatment of emergency patients requiring invasive or non-invasive airway management with basic or advanced monitoring as has been rightly observed by the AO. This observations have not been rebutted in any manner. We fully endorse the observations of the AO in this regard that in the instant case, each of these ambulances had sophisticated medical equipment, medicines and Emergency Medical Technicians which should be a Registered Medical Practitioner. Therefore, these ambulances could not be classified as a patient transportation vehicle with first aid medicines but classified as a ‘mini hospital on wheel’ with doctor, medicines and necessary medical equipment. They were designed to manage first few critical hours of the patients. This



contention has been rightly rejected by the authorities as well. Accordingly, we find that such services are duly covered by the Explanation to section 194J of the Act falling in the category of 'Professional services'. Therefore, the conclusion drawn by the lower authorities do not require any interference.

7.2 It is submitted that the AO did not consider the BVG contract in the AY 2018-19 but only in AY 2020-21. It is a settled proposition of law that for income tax purposes, each year was self-contained unit and the decision of the AO given in a particular year does not operate as *res judicata* in the matter of assessment of the subsequent year. The income tax assessment and the facts found therein are conclusive only in the year of assessment; they are not binding or conclusive in subsequent years. The Department is entitled to judge the accounts of an assessee each year on their merits. The fact that they have accepted a particular form of accounts as sufficient in one year does not debar them from holding later that particular items or particular claims made by the assessee in later years have not been established. There is no question of estoppel in such a case.

8. Accordingly, the ground w.r.t. services rendered by BVG in ITA No. 4665/Mum/2025 is **dismissed**.

9. In so far as the other two contracts with FSMS and HLL are concerned which is common issue in both the above stated appeals, we find



that the contentions of the ld.AR with reference to specific clauses of the agreement have not been properly appreciated by the lower authorities. Moreover, the ld.CIT(A) did not consider the arguments of the assessee based on coordinate bench decisions of ITAT, Mumbai, that the issue of maintenance of equipments etc. have been decided in favour of several such cases by the coordinate benches of ITAT, Mumbai. Before us, the ld.AR has placed reliance on various other similar decisions which to our mind require proper analysis vis-à-vis the specific terms and conditions laid down in the respective agreements with the above two concerns. As far as the agreement with FSMS is concerned, it was doing only the work of collection of samples etc., rendering only logistic support while the testing was done by some other authorities. As far as the contract with HLL is concerned, it is submitted that, HLL is a company and not a doctor/medical professional so as to render professional services. As per Clause 4(e)(iii) of the Contract with HLL, it is explicitly mentioned that it shall provide reports from qualified pathologists. It was argued that nowhere mentioned in the contract that HLL shall report or certify the report of pathological examination. It was submitted that the services provided by HLL were largely logistical in nature including the collection, transportation, storage, and analysis of blood samples and should, therefore, fall under Section 194C of the Act. We find that this claim of the ld.AR runs contrary to the



observations and findings of the Id.CIT(A).It appears that in such a case,the terms and conditions of the said agreement are required to be thoroughly analysed to arrive at any concrete conclusion. It is further submitted that the AO has decided the issue based only on the reading of the contract with BVG without going into the details of the contract with FSMS and HLL. The Id.AR has requested for remanding the matter in respect of these concerns for revisiting the issue to which we agree as none of the authorities concerned have properly considered the submissions made before them and have straight way taken an adverse view of the matter in respect of above two parties.

9.1 We have given a thoughtful consideration to the contentions of the Id.AR and find sufficient force therein.We do agree that the terms of contract are germane to the whole issue under consideration.However,the lower authorities have not applied due application of mind in this regard.Accordingly,in the interest of justice and fairplay,we set aside the appellate order in respect of the adverse conclusion drawn by the Id.CIT(A)w.r.t. above stated two contracts with HLL and FSMS dealt with in ITA No.4665 and 4666/Mum/2025 and remand the issue to the file of the AO with a direction to examine the terms and conditions and act as per the provisions of law.Needless to state,he would allow the assessee adequate opportunity of hearing so as to adduce necessary evidences and



arguments,if,any in support of its case. Therefore,the grounds of appeal in this regard are allowed for statistical purposes.

10. In the result, **the appeal of the assessee in ITA No. 4665 is partly allowed while appeal in ITA No. 4666/Mum/2025 is allowed for statistical purposes.**

Order pronounced in the open court on **09/04/2026.**

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 09.04.2026

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

