



KOVAI MEDICAL CENTER AND HOSPITAL LIMITED

NABH Accredited Hospital

Excellence in Healthcare

99, Avanashi Road, Coimbatore - 641 014. INDIA | Phone : (0422) 4323800, 4324000, 6803000

Web : www.kmchhospitals.com | CIN No : L85110TZ1985PLC001659



12.03.2024

Ref: KMCH/SEC/SE/2023-24/2114

To
Corporate Relationship Department
BSE Limited
1st Floor, New Trading Ring
Rotunda Building, P.J.Towers
Dalal Street, Fort
Mumbai - 400 001

Dear Sirs,

Sub: Disclosure under Regulation 30(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Ref: Security ID: KOVAI, Security Code: 523323

With reference to your E-mail dated 12.03.2024, for our earlier Submission under Regulation 30(2) of SEBI(LODR) Regulations 2015 on 11.03.2024, we herewith enclose the copy of Demand Notice received by our Company from Income tax department on 09.03.2024 for Short Deduction of TDS/TCS for the Financial year 2016-17.

Also please note that the Communication E-mail was received Post-Working hours on Saturday (09.03.2024, 17.08 IST) and hence the intimation was given on next Working Day (11.03.2024).

We request you to kindly take the above intimation on record.

Thanking you,

Yours truly
For Kovai Medical Center and Hospital Limited

R.Ponmanikandan
Company Secretary





KOVAI MEDICAL CENTER AND HOSPITAL LIMITED

Excellence in Healthcare

Coimbatore - 641 014. | CIN No : L85110TZ1985PLC001659

Continuation Sheet No. 1

Annexure-A

Show Cause Notice received from Income Tax Authority :

Name of the authority	Income Tax Department
Nature and details of the action(s) taken, initiated or order(s) passed	Demand Notice issued under Section 201(1) & 201(1A) of the Income Tax Act, 1961
Date of receipt of direction or order, including any ad-interim or interim orders or any other communication from the authority.	09.03.2024
Details of the Violation(s)/ contravention(s) committed or alleged to be Committed	Demand Notice has been issued for the Financial Year 2016-17 for Short deduction/collection of TDS and TCS.
Impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible	None- There is no material impact on financials, operations or other activities of the Company.





GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY
COMMISSIONER OF INCOME TAX,
TDS
DC/ACIT TDS CIRCLE
COIMBATORE

To, KOVAI MEDICAL CENTER AND HOSPITAL LIMITED KOVAI MEDICAL CENTER AND HOSPITAL LIMITED 1,AVINASHIROAD,COIMBATORE, ,, tamil nadu coimbatore 641014,Tamil Nadu India	
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TAN: CMBK03042E	Assessment Year: 2017-18	Dated: 09/03/2024	DIN & Order No : ITBA/COM/F/17/2023-24/1062310871(1)
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Sir/ Madam/ M/s,

Subject: Proceedings under section 201 - Order

1	Name of the assessee	M/s Kovai Medical Centre and Hospital Limited
2	Address	Avinashi Road, Coimbatore 641 014
3	TAN / PAN	CMBK03042E / AAACK9192L
4	Ward /Circle/Range	TDS Circle, Coimbatore
5	Status	Company
6	Financial Year	2016-17
7	Assessment Year	2017-18
8	Whether Resident/Non Resident	Resident
9	Nature of business	Multi-Specialty Hospital
10	Section under which order is made	Section 201(1) & 201(1A) of the Income Tax Act,

Enclosed: Refer to attachment CMBK03042E_2017 ATTACHMENT_100076238768.pdf

Note: If digitally signed, the date of digital signature may be taken as date of document.
May Flower Mid City Building, 1510, Trichy Road, Coimbatore, Tamil Nadu, 641018
Email: COIMBATORE.DCIT.TDS@INCOMETAX.GOV.IN, Office Phone:422/222-5094

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

* DIN- Document identification No.

		1961.
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Order u/s 201(1) / 201(1A) of the Income Tax Act, 1961

M/s Kovai Medical Centre and Hospital Limited

Period of assessment from 01.04.2016 to 31.03.2017

1. The assessee company, M/s Kovai Medical Centre and Hospital Limited (referred as KMCH hereafter) having TAN: CMBK03042E is running a multispecialty hospital and providing health care services. In addition, the company has branches for health care at City Centre, Erode, Sulur and Kovilpalayam. The assessee deductor has recently completed the construction of Medical College and hostel.

1.1 A survey u/s 133A (2A) was conducted on 22.11.2021 in the business premises of KMCH at No.99, Avinashi Road, Coimbatore – 641 014. During the course of survey, the following defaults were identified for the FY 2016-17:

1. The assessee deductor entered into various AMC contracts and the TDS was deducted u/s 194C as contract payments. However, the TDS had to be deducted u/s 194J for AMC payments made towards maintenance of medical equipment.
2. No TCS was collected on the sale of scrap.

TDS on contract with professional services:

2. During the course of survey, the details regarding AMC agreement entered for various services by KMCH were collected. On examination, it is seen that the AMC was entered for various services which includes catering contract, housekeeping, man power contract and medical equipment. The assessee deductor has deducted TDS on all AMC payments u/s 194C of the Income Tax Act, 1961. However, the AMC for the medical equipment involves technical skill to attend the repair and maintenance of the medical equipment. Therefore, the AMC for medical equipment has to be treated as technical services and TDS is required to be deducted u/s 194J of the Income Tax Act, 1961 as fees for Technical services. The party-wise details AMC payments of Rs. 5,80,09,467/- and TDS deduction of Rs. 5,45,95,785/- are enclosed as Annexure 1 to this order.

2.1 The major portions of AMC towards medical equipment were paid to M/s Siemens Healthcare Private Limited, M/s Varian Medical Systems International India Pvt Ltd and M/s Wipro Ge Healthcare Pvt Ltd. In respect of the Financial Year 2016-17, the tax rate u/s 194C is 2% whereas the tax rate u/s 194J is 10%. Thus there was a short deduction of 8% in respect of AMC paid towards medical equipment.

2.2 On the above line, a show cause notice was issued on 24.02.2022 requiring the assessee to show cause why the short deduction of 8% should not be levied along with applicable interest u/s 201(1A) for the FY 2016-17. In response, the assessee deductor submitted its reply which is reproduced as under:-

'B) You have asked us to show cause why the "AMC paid to Maintenance of Medical equipment" for various years deducting TDS u/s 194C should not be treated as "Technical Services" u/s 194J and consequently why we should not be treated as an Assessee in default u/s 201(1) for having deducted tax at source at the rate of 2% applicable to Contracts instead of the higher rate of TDS @ 10%

applicable to Technical services. You have also stated as to why interest u/s 201(1A) should not be levied on the shortfall of Tax. In this connection we submit the following for your kind consideration: -

1. *1. The payment towards Annual Maintenance Contract (AMC) is for a routine maintenance and upkeep contract warranting deduction @ 2%u/s. 194C and it is not a technical service attracting TDS @10% u/s 194J.*
2. *It is to be noted that “sophistication” or “specialisation” of the machines are not the criteria to determine whether a contract is one of “Technical Services”. In fact, the law does not envisage the applicability, classification and basis of TDS based on these criteria.*
3. *The relevant criteria, in this case, for the correct application of the relevant provisions of TDS is whether the services rendered are in the nature of maintenance services to ensure the proper upkeep and functioning on a day today basis (or) if the services rendered are in the nature of technical services.*
4. *In the case of a maintenance contract it is abundantly clear that the purpose is only to ensure that the machine functions smoothly and in an uninterrupted manner. An AMC takes care of normal wear and tear including repairing and replacing of spares wherever necessary.*
5. *Any service which is a standard facility provided to all those who are willing to pay the prescribed fee does not amount to a fee paid for Technical services. This principal has been upheld by various appellate forums including the Jurisdictional High court.*
6. *The development or deployment of a medical equipment or its installation / erection for commencement of its functions require technical support, the payment for which would certainly fall under “technical services” since the machines are sophisticated and special machines. However, the maintenance of the same for its smooth proper functioning in an uninterrupted manner does not involve any technical service. The sophistication and specialisation is that of the machines and not the person/agency who maintains the machines based on certain prescribed parameters and by the use of certain maintenance tools/procedures.*
7. *It is commonly seen that the persons with Diploma in Mechanical engineering or electrical engineering or with software knowledge are engaged in such maintenance contracts. Their work is more of a diagnosis with specialised tools that they deploy it comes to identifying the problem and a routine mechanical work when it comes to maintenance of the machines including replacement of spares etc. There is no technical service involved in these maintenance contracts.*
8. *In our case, even the high end machines are maximum down for few hours during the Maintenance work and they are up and running thereafter. Significant majority of the maintenance work are in changing the Scan bulbs due to wear and tear, change of rollers, setting right the software program glitches which are quickly identified by a maintenance software tool when keyed in, etc. Hence these are standardized procedures using specialized maintenance tools/ software that are handled by not so high level technicians.*
9. *In the current scenario of fast changing technology, no machine is considered sophisticated. It is a matter of months that any such equipment and machines are commoditized by adopting a reverse engineering process. In fact, this is the reason why spurious goods are in the market soon after a sophisticated product is launched. This amply demonstrates that there is not much of technical service even in development of certain products, leave alone the maintenance of such equipment to be construed as a technical service.*

10. *The Annual Maintenance Contracts are contracts for periodical inspection and routine maintenance or repair work including or excluding supply of spare parts and hence are attracted by Section 194C and not by 194J.*
11. *The Circular No. 7 dt. 08.08.1995 issued by the CBDT clearly says that a routine, normal maintenance contract which includes supply of spares will be covered u/s. 194C. The AMC contracts are very much routine normal maintenance contracts. These works require skilled mechanics and not necessarily a qualified technician as long as the skilled mechanics are able to utilize the maintenance tools/machines during the maintenance work to diagnose and replace the spares.*
12. *It is submitted that whether it is a normal computer or the High-end Robotic machines or High-end Nuclear Machines, a maintenance contract is for the upkeep by way of routine inspection and for the smooth functioning rather than a technical service as contemplated u/s. 194J.*
13. *The basic principles on which a contract is to be construed as a normal maintenance contract or a technical service has been clearly laid down by various Appellate Authorities in the past. We rely on the following judicial pronouncements to reiterate our submission that these are normal maintenance contracts and not Technical services :-*
 2. *CIT (TDS)-2 Vs. Saifee Hospital (Bombay HC) reported in 262 Taxmann 343*
 3. *ITO (OSD) (TDS -1(3) – Mumbai – Dy. DIT (TDS) 1 (1), Mumbai Vs. Dr.BalabhaiNanavati Hospital (ITAT "B" Bench Mumbai) reported in ITA Nos. 5045/5046, 5047/5048/MUM/2013, ITA No. 430/MUM/2014, ITA NO. 4427/MUM/2015.*
 4. *Gujarat State Electricity Corporation Ltd Vs ITO,3 SOT 468 (ITAT, Ahd)*
 5. *Nuclear Power Corporation Limited Vs. ITO (TDS) (Ahd Bench) – ITA Nos. 3059 to 3061 & 3081 /Ahd/2009 dt.30.09.2011.*
 6. *Skycell Communications Limited (Madras High Court 251 ITR 53)*

In view of the above we humbly submit that we have fully complied with the applicable provisions of TDS in our payments towards AMC of machines as per Section 194C."

2.3 The reply of the assessee deductor by quoting various case laws has been perused carefully. The assessee deductor has claimed that all the AMC payments will come under 194C. The assessee deductor has relied on Madras High Court decision in the case of M/s Skycell Communication Limited in 251 ITR 53 in which the assessee was engaged in providing cellular mobile telephone facility and not relating to any medical equipment. Out of the AMC charges paid by the assessee, the medical equipment which require technical skill alone were segregated and communicated in the show cause stating that the TDS should be deducted on the AMC paid towards medical equipment u/s 194J instead of 194C as claimed by the assessee deductor. The ledger account of AMC as submitted by the assessee deductor was examined and the AMC paid towards catering, housekeeping, lift maintenance, telephone, Computer and its accessories have been excluded. The AMC towards medical equipment alone has been considered for quantifying the short deduction of TDS for FY 2016-17. The claim of the assessee deductor that the maintenance of these machines require skilled mechanics and not necessarily a qualified technician as long as the skilled mechanics are able to utilize the maintenance tools / machines during the maintenance work to diagnose and replace the spares is not acceptable as each AMC service providers authorizes only the qualified service technician to provide the service.

2.4 On perusal of the AMC agreement entered between KMCH and Siemens Healthcare, the following could be found:

“Whenever the equipment covered by this agreement utilizes Siemens operating system software, Siemens will provide all maintenance and updates for such operating system software, except for syngo.via and syngo.plaza software, as part of this agreement. Such updates will solely enhance previously purchased capacities of the equipment. Operating system software upgrades that provide new features or capabilities of that require hardware changes will be offered to customer at purchase prices established by Siemens. In addition, some upgrades may require applications training performed by Siemens’ personnel that will be offered at Siemens’ rates and terms then in effect. Siemens retains the sole right to determine whether an upgrade requires such training.”

2.5 The above agreement specifies that updates to enhance the performance of the machines would be provided by Siemens Healthcare which would enhance the previously purchased capacities of the equipment. The above updates could not be provided by a skilled mechanic and requires specified technical knowledge. Hence the claim of the assessee that maintenance contract is for upkeep by way of routine inspection for smooth functioning rather than technical service is not acceptable. Hence, payment made to AMC had to be treated as fee for technical service only.

2.6 Further, Question No. 29 in the Circular No. 715 dated 08.08.1995 is reproduced as below:

“Question 29: Whether a maintenance contract including supply of spares would be covered under Section 194C or 194J of the Act?”

Ans: Routine, normal maintenance contracts which includes supply of spares will be covered under section 194C. However, where technical services are rendered, the provision of Section 194J will apply in regard to tax deduction at source”

2.7 In the above, CBDT has clearly explained that the TDS should be deducted u/s 194J where the technical services are rendered. Therefore, it is confirmed that KMCH has defaulted in deducting TDS at 2% u/s 194C instead at 10% u/s 194J for the FY 2016-17.

2.8 Accordingly, there is short deduction @ 8% for the FY 2016-17 towards the AMC paid to medical equipment and the assessee deductor is treated as an assessee in default u/s 201(1) of the Income Tax Act, 1961.

3. TCS on sale of scrap

3.1 During the course of survey, it was found that the assessee deductor had not collected TCS on sale of scrap as detailed below:

Financial year	Amount of sale of scrap
2016-17	23,50,045/-

3.2 In this connection, vide reply letter dated 24.01.2023, KMCH has stated that the same has been accepted by the deductor and the TCS was remitted along with interest on 31.03.2022.

3.3 However, reply of KMCH cannot be accepted as KMCH simply remitted the tax and not filed any corroborative TDS statement to claim the same.

4. Conclusion:

4.1 In view of the foregoing analysis, it is confirmed that the assessee deductor has defaulted while deducting TDS during the FY 2016-17.

The provision of section 201(1) of Income Tax Act is reproduced as under:

(1) Where any person, including the principal officer of a company—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax.

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed,

(The prescribed form is Form 26A as stated in Rule 31ACB of Income Tax Rules, 1962)

The provision of section 201(1A) of Income Tax Act is reproduced as under:

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,-

- 1. at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and**
- 2. at one and one-half per cent for every month or part of month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.**

4.2 Therefore, KMCH shall be liable to pay simple interest at the rate of one percent for every or part of the month from the date on which the tax was deductible to the date of filing of return of income by the deductee. As no Form 26A has been provided, the date of passing of order will be considered

as date of filing of Return of Income.

4.3 Hence, the order u/s 201(1) of the Income Tax Act, 1961 in the case of KMCH for the FY 2016-17 is passed with raising demand of **Rs. 87,55,182/-** as below:

Demand u/s 201(1)	-	Rs. 47,32,531/-
Interest u/s 201(1A)	-	Rs. 40,22,651/-
Total	-	Rs. 87,55,182/-

4.4 Breakup for the above is as follows:

Short-deduction:

AMC towards Medical equipment	TDS Deductible	TDS Deducted	Short deduction	Interest upto March -2024 from March-2017 @ 1% pm	Total
5,80,09,467/-	58,00,947/-	10,91,916/-	47,09,031/-	40,02,676/-	87,11,707/-

Non-collection of TCS:

Amount of sale of scrap	TCS collectible	Interest upto March -2024 from March-2017 @ 1% pm	Total
23,50,045/-	23,500/-	19,975/-	43,475/-

4.5 KMCH is requested to pay the demand as per the demand notice enclosed with this order.

4.6 Penalty proceedings u/s 271C will be initiated separately for the non-deduction of TDS by the Additional Commissioner of Income tax, TDS Range, Coimbatore.

BHARATHI S.
DC/ACIT TDS CIRCLE COIMBATORE

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)