TPAs are required to deduct tax u/s 194J on payment to hospitals

The assessee, a Third party Administrator ("TPA") licensed by IRDA, was engaged in providing "cashless" health insurance claim services. The insurance company issued cashless medi-claim policies (that were serviced through TPAs) under which it assured the policy holder of free treatment up to the assured amount. The TPA issued an identity card to the insured pursuant to which he could approach any network hospital to avail of cashless treatment. Upon treatment, the hospital sent the bill to the TPA and the same would be paid by the TPA to the hospital. **The payment would be made from funds made available by the insurance company to the TPA**. The assessee also entered into MOUs with hospitals and nursing homes by which it undertook to reimburse / settle the bills of the policy holders. The AO took the view that as the hospitals had rendered professional ('medical') services the assessee ought to have deducted tax at source u/s 194J at the time of payment. The assessee filed a writ petition to challenge the said order on the ground that it was not "responsible" for making the payment. HELD, dismissing the petition:

(1) Under the arrangement, it is the TPA who is responsible for making payments to the hospital. **The TPA can be termed as an "agent" of the insurance company**. The TPA was given unbridled power and had taken over a part of the work of the insurance company. Its decision as to the payment of bill and sending the insured to the accredited hospitals was final and the Insurance company was not in touch with the insured at all;

(2) Another factor which was a pointer to the fact that the TPA was required to deduct tax at source was the mechanism of operation of funds. A claim float account was opened in the name of the TPA into which money would be deposited by the insurer and used by the TPA to pay the hospitals. The funds were replenished by the insurer. **The TPA was in control of making payments**

to the hospitals and the liability of the Insurer was only of replenishing the funds. The control of the funds was with the TPA;

(3) The 'Service Level Agreement' entered into by the TPA with the insurance company as well as the agreement entered into by the TPA with the hospital indicated that the TPA was 'responsible for making payment' and that it was obliged to deduct the tax at source.

Note: The argument on the basis of **Hindustan Coca Cola vs. CIT** 293 ITR 226 (SC) that as the hospitals were assessed, the payer cannot be treated as an 'assessee in default' was not addressed by the Court.

See also: **Mahindra & Mahindra** 313 ITR 263 (AT) (Mum.) (SB): The primary liability is of the recipient. Proceedings against the payer are maintainable only if tax cannot be recovered from the recipient.