

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI R.L NEGI, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 268/CHD/2020

निर्धारणवर्ष / Assessment Years : 2017-18

Joint Commissioner of Income Tax (OSD) (TDS) Circle Aaykar Bhawan, Sector 2 Panchkula	बनाम	M/s Liberty Shoes Ltd., 13 th Mile Stone, Liberty Puram, G.T. Road, Kutail, Karnal
TAN NO: RTKL00664G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT
निर्धारिती की ओर से/Assessee by : Sh. Satish Kumar Goel, Advocate

सुनवाई की तारीख/Date of Hearing : 10.08.2021
उद्घोषणा की तारीख/Date of Pronouncement : 20.10.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The Revenue has filed the present appeal against the order dated 26.02.2020 passed by Commissioner of Income Tax (Appeals), Karnal [for short 'the CIT(A)'], whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the order passed by the AO u/s 201(1) (1A) of the Income Tax Act, 1961 [for short 'the Act'] for the assessment year 2017-18.

2. Brief facts of the case are that TDS survey u/s 133A(1) of the Act was conducted at the business premises of the assessee company on 19.10.2017. Perusal of relevant documents during the course of survey

proceedings and the post survey enquiry revealed that the assessee had not deducted tax at source on the payment of incentive to various dealers. Accordingly, the Jt. Commissioner Income Tax (JCIT) (OSD) TDS Circle Panchkula issued notice u/s 201(1)/201(a) of the Act, to the assessee directing to explain as to why TDS has not been deducted/short deducted on various payments made during the previous year. In response thereof, the assessee filed written reply and also made an application u/s 144A of the Act for issuing directions. The contention of the assessee company before the Ld. JCIT was that since the payments were made towards incentives to various parties, question of deducting tax at source u/s 194H of the Act does not arise. So far as the deduction of tax u/s 194J of the Act is concerned, the contention of the assessee was that since there was no professional/ technical services involved in on line advertisement to promote company's sale, no tax was required to be deducted u/s 194J of the Act. However, rejecting the contention of the assessee the Ld. JCIT held the assessee liable to pay interest u/s 201(1A) of the Act for non-deduction of tax at source u/s 194H and 194J of the Act. In the first appeal, the Ld. CIT(A) set aside the findings of the Ld. JCIT and deleted the addition made on account of non-deduction of tax at source u/s 194H amounting to Rs 71,09,165 and u/s 194C amounting to Rs.7,93,455/-. Against the said findings of the Ld. CIT(A), the revenue is in appeal before this Tribunal.

3. The Revenue has challenged the impugned order passed by the Ld.

CIT(A) on the following grounds: -

“1. Whether on facts and circumstances of the case Ld. CIT(A) is right in allowing the appeal of the deductor whereas, the deductor was liable to deduct tax at source u/s 194H of the Income Tax Act, 1961 on account of incentive paid.

2. Whether on facts and circumstances of the case the Ld. CIT(A) is right to justifying that the deductor was liable to deduct tax at source u/s 194C of the Income Tax Act, 1961 instead of 194J.

3. Whether on facts and circumstances of the case the Ld. CIT(A) was correct in holding that the judgment of Hon'ble ITAT in case of Vodafone Idea Ltd. Vs Assistant Commissioner of Income Tax (TDS) Chandigarh [2019] 109 taxmann.com 466(Chandigarh-Tribe.) and Hindustan Coca Cola Beverages (P.J Ltd. Vs Commissioner of Income Tax-III, Jaipur [2017] 87taxmann.com 295(Rajasthan) are applicable to the facts of the case.

4. Whether on facts and circumstances of the case the Ld. CIT(A) was correct in holding that the judgment of Hon'ble High Court in case of Pr. Commissioner of Income Tax-8 Vs Reliance Communication on 22 July 2019 (Bombay High Court) is applicable to the facts of the case.

4. Since there is a delay of 37 days in filing the present appeal, the appellant/revenue had filed an application for condonation of delay stating that due to countrywide lockdown in the wake of COVID-19 pandemic w.e.f. 25.03.2020, the process for filing appeal could not be completed, therefore, the present appeal could not be filed within limitation period. During the course of arguments, the Ld. DR submitted

before us that the revenue could not file the appeal within the limitation period due to the circumstances beyond its control. The Ld. DR further invited our attention to the provisions of the Taxation and other Laws (Relaxation of Certain Provisions) Bill, 2020 and submitted that vide the said Bill the government of India extended the due dates for filing appeals, reply or any report etc. falling during the period 20.03.2020 to 31.12.2020 to 31.03.2021. In view of the aforesaid averments, the Ld. DR submitted that the application filed by the revenue for condonation of delay may be allowed and the delay of 37 days in filing the present appeal may be condoned and the revenue may be allowed to argue its appeal on merits.

5. The Ld. counsel for the assessee did not oppose the application filed by the Revenue. Since the revenue has explained the delay which prevented it from filing the present appeal within limitation period, we allowed the application and condoned the delay and permitted the Ld. DR to argue the appeal on merits.

6. Accordingly, the Ld. departmental representative submitted that the Ld. CIT(A) has erred in holding that the assessee was not required to deduct tax at source in respect of incentive paid to various dealers as incentives. The Ld. DR further submitted that the assessee during the previous year paid an amount of Rs. 12,18,71,396/- on account of incentive to its dealers. The payment was made for services rendered for selling goods. The Ld. DR further contended that the distributors were

appointed by the assessee on fulfilling certain conditions, therefore the relationship between the assessee and the distributors was not based on the principle of equity but of principal and the agent. The Ld. DR placing reliance on the judgment of the Hon'ble Calcutta High Court in the case of *Hutchison Telecom East Ltd. vs. CIT 59 taxmann.com 176 (Calcutta)* submitted that since the findings of the Ld. CIT(A) are contrary to the ratio laid down by the Hon'ble Calcutta High Court, the same is liable to be set aside.

7. On the other hand, the Ld. counsel for the assessee supporting the order passed by the Ld. CIT(A) submitted that since the assessee company deals with its distributors/dealers/franchise showrooms on principal-to-principal basis and does not reserve right over the stocks of goods sold to them, the same cannot be termed as agency arrangements which is the prerequisite for applicability of the provisions of section 194H of the Act. Explanation (i) to section 194H clarifies that the commission or brokerage includes any payment received or receivable, directly or indirectly by a person acting on behalf of another person for services rendered not being professional services or of any services in the course of buying and selling of goods or in relation to any transactions relating to any asset, valuable article or things, not being securities. The Ld. counsel placing reliance on the judgment of the Hon'ble Rajasthan High Court in the case of *Hindustan Coca Cola Beverages (P.) Ltd. Vs. Commissioner of Income-tax-III, Jaipur*

[2017] 87 taxmann.com 295, judgment of the Hon'ble Bombay High Court in the case of *Pr. Commissioner of Income Tax-8 vs Reliance Communications in ITA No 603 of 2017* order of the Chandigarh Bench of the ITAT in the case of *Vodafone Idea Ltd. Vs. Assistant Commissioner of Income-tax(TDS), Chandigarh [2019] 109 taxmann.com 466 (Chandigarh - Trib.)* and the decision of the Jaipur Bench of the ITAT in the case of *Bharti Hexacom Ltd. Vs. Income tax Officer (TDS)-II, Jaipur [2016] 68 taxmann.com.388 (Jaipur Trib.,* submitted that since the findings of the Ld. CIT(A) are in accordance with the judgments of the Hon'ble High Courts and the decisions of the various Benches of the Tribunal, there is no infirmity in the said order to interfere with.

8. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the parties. The Ld. CIT(A) has decided this issue in favour of the assessee holding as under:

"I have examined the issue and find that in respect of non-deduction of TDS and application of sect on 194H, the Assessing Officer (A.O.) treated the benefits allowed to franchise showrooms and franchise distributors as per relationship of one person acting on behalf of other for buying and selling of goods. The concept and perception of commission and brokerage was thus envisaged by JCIT while imparting directions under section 144A to A.O. The Counsel for the appellant, vehemently, argued that provisions of section 194H are specific and be read between the lines and also alongside to be looked into the definition and judgments pronounced on the Principal and Agent relationship

etc. The A.O. while applying section 194H in the appellant's case except for his own observations, has neither referred nor relied on any case law at all – ITAT, High Court or Hon'ble Apex Court, as stated by the counsel in the course of appellate proceedings before me. I find this to be a fact as per the text of A.O's Order.

The counsel for the appellant stated that the A.O., while passing the order under Section 201 (1)(IA), simply proceeded on the TDS survey party's observations as also post survey details and the replies made by appellant. He also framed his order while complying with the directions of JCIT under section 144A being mandatory to follow and act upon. The counsel for the appellant, in his written submissions, produced a synopsis chart of A.O.'s reporting to JCIT in proceedings under section 144A and later the para wise directions of JCIT, while contending that none of the adverse observations are applicable in the facts and circumstances of the appellants case. I have very carefully looked into the Paper Book filed as well the written submissions along with copies of few judgments in support of the appellant's case that the policy of sales for the franchise showrooms and distributors had specifically provided the scheme for incentives and not a penny was paid or was payable as commission or brokerage or any payment in the case of the appellant. It was strongly argued that at no stage any relationship like principal and agent existed between the appellant company and its showroom franchisees or distributors, Further, as per explanation 1 to Section 194H never were any services rendered in buying and selling. According to the past history in appellant's case, such a proposition was never raised and as per the assessee, rightly so as the provisions of Section 194H were applicable on the rightful incentives of the buyers as per the sale policy. In view of the facts and circumstances in the appellant's case, no relevance existed in the citations of Indian Contract Act when read with Section 194H read with Explanation 1. The reliance on judgments including that of the Delhi High Court squarely applies in favour of appellant wherein it was held that: -

"The quantum of incentives earned by a dealer may be dependent on the quantum of

certain sales, but the normal buying and selling goes on irrespective of the schemes and, hence, these incentives cannot be termed as commission in the normal course of buying and selling the goods as envisaged in Section 194H of the Act"

The appellant also relied upon the following judgments of ITAT Chandigarh Bench and High Courts:

i) Vodafone Idea Ltd. Vs. Assistant Commissioner of Income-tax (TDS), Chandigarh [2019] 109 taxmann.com 466 (Chandigarh - Trib.)

ii) Hindustan Coca Cola Beverages (P.) Ltd. Vs. Commissioner of Income-tax-III, Jaipur [2017] 87 taxmann.com 295 (Rajasthan)

iii) Bharti Hexacom Ltd. Vs. Income tax Officer (TDS)-II, Jaipur [2016] 68 taxmann.com .388 (Jaipur Trib.)

iv) Pr. Commissioner of Income Tax-8 vs Reliance Communications ... on 22 July, 2.019 (Bombay High Court).

These citations have also been perused and considered and are in favour of the appellant. The A.O. or JCIT didn't refer to any judgment in support of their observations that provisions of Section 194H read with Explanation 1 bring the case as one of services rendered in buying and selling. I don't find any merit: in the findings of A.O. read with the directions of JCIT and hold that no TDS deduction was required, keeping in mind the facts and circumstances in the appellant's case in respect, of incentives paid/payable to their franchise showrooms and distributors. This ground of appeal is decided in the appellant's favour and the addition of non-deduction of TDS under section 194H amounting to Rs.71,09,165/- on amount paid/credited Rs. 12,18,71,196/ is deleted."

9. As pointed out by the Ld. counsel, the Ld. CIT(A) has allowed this

ground of appeal of the assessee by following the ratio laid down in the cases referred above. Since the Ld. CIT(A) has decided the issue in favour of the assessee by following the judgments of the Hon'ble High Courts and the decisions of the Tribunal, discussed above, we do not find any reason to interfere with the findings of the Ld. CIT(A). So far as the judgment relied upon by the Ld. DR is concerned, in our considered opinion the facts of the said case are different from the facts of the present case, hence the ratio laid down is not applicable to the present case. Accordingly, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

10. Vide ground No 2 the Revenue has challenged the action of the Ld. CIT(A) in holding that the assessee was not required to deduct tax u/s 194J. The Ld. DR supporting the order passed by the JCIT (TDS) submitted that the Ld. JCIT (TDS) Panchkula has rightly observed that since the assessee had made payments to various advertising agencies providing/managing the services of the company through online portal and since the assessee company hired the skill employees with technical and professional qualifications for the aforesaid purposes, the provisions of section 149J of the Act are applicable in the assessee's case. Accordingly, the Ld. DR submitted that the findings of the Ld. CIT(A) may be set aside.

11. On the other hand, the Ld. counsel supporting the order passed by

the Ld. CIT(A) submitted that since the findings of the Id. CIT(A) are in accordance with the provisions of law therefore, there is no merit in this ground of appeal of the revenue. The Ld. counsel further pointed out that as per the clarificatory question/answer in Circular No. 715 dated 08/08/1995, the advertising contract shall fall u/s 194C and advertising agencies shall have to deduct Tax at source u/s 194J of the Act, while making payments to their artists, models etc.

12. We have gone through the available material on the record in the light of the rival submissions of the parties. During the previous year the assessee paid Rs.99,18,191/- to three parties on which the assessee deducted Tax @ 2% under section 194C of the Act. The Ld. counsel placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Hindustan Coco Cola Beverage (P) Ltd. vs. CIT 163 Taxman 355(SC)* submitted that as per the ratio laid down in the said case, where the recipient of income has already paid taxes on amount received from deductor, the department cannot recover tax from deductor on the same income by treating deductor to be assessee-in-default for shortfall in its amount of tax deducted at source. The Ld. CIT(A) has decided this issue in favour of the assessee holding as under: -

“The grounds of appeal pertain to the application of provisions of section 194J instead of 194C, in respect of online managerial services and holding the appellant in default for lesser deduction of 2% rate under section 194C. The A.O. proceeded to calculate at 10% rate while working out the short deduction at

Rs. 7,93,455/- on amount paid/credited of Rs. 99,18,191/-, The payments pertained to three parties and the counsel for the appellant, vehemently, argued and stated in written submissions, as well, that in the facts of his case, he had rightly and legally deducted TDS at 2% rate. In addition to that he pleaded that the status between him and the payee was such in which provisions of section 194J are not applicable. The appellant stated that the amendments brought in by the Legislature in view of uncalled for litigations, are continuing, I have perused the same and find that such amended provision can be considered as of clarificatory nature although not retrospective, I am inclined to agree in favour of the appellant and hold that no short IDS deduction was there in his case and, hence, delete the amount calculated at Rs. 7,93,455/- on amount, paid/credited of Rs, 99,18,191/-.

13. In our considered view, the findings of the Ld. CIT(A) are in accordance with the provisions of law and in consonance with the ratio laid down by the Hon'ble Supreme Court in the case of *Hindustan Coco Cola Beverage (P) Ltd. vs. CIT* (supra). Hence, we do not find any infirmity in the order of the Ld. CIT(A) to interfere with the same. Accordingly, uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

In the result, the appeal of the Revenue is dismissed.

Order pronounced on 20th Oct. 2021.

Sd/-
(N.K. SAINI)

उपाध्यक्ष /Vice President

Dated : 20.10.2021

“आर.के.”

Sd/-
(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअद्येषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent

3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar