

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI
BEFORE SHRI P. K. BANSAL, VICE PRESIDENT
AND SMT BEENA A. PILLAI, JUDICIAL MEMBER
ITA No. 6719/DEL/2014 : Asstt. Year : 2011-12**

ITO Ward-19(1) New Delhi	Vs.	Ogaan Publication Pvt. Ltd. H-2, Hauz Khas Village New Delhi PAN : AAACO1078K
[Appellant]		[Respondent]

Assessee by :	None
Revenue by :	Sh. P.Dam Kanunjana, Sr. DR

Date of Hearing:	11	12	2017
Date of Pronouncement:	11	12	2017

ORDER

PER P.K. BANSAL, VICE PRESIDENT :

This appeal has been filed by the revenue against the order of the CIT(A) dated 19.09.2014 by taking the following ground of appeal :-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of disallowance u/s 40(a) (ia) by ignoring the express provision of law u/s 194H and the CBDT circular no. 715 dated 08.08.1995 which states that the tax has to be deducted on the payments made to advertising agency.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by ignoring the observation of the A.O. that assessee has raised bills in the name of advertising agencies for the cost of space and deducted agency commission towards commission to the advertising agencies which indicates that space was purchased from the assessee on basis of specifications by actual party and the agency acted as an agent for the assessee."

2. Non-appeared on behalf of the assessee, we therefore decided dispose of the appeal after hearing the Id. DR.

3. After hearing the Id. DR and going through the order of the tax authorities below, we noted that the issue involved in this appeal regarding the disallowance made u/s 40(a) (ia) is covered by the decision of this tribunal in assessee's case for the assessment year 2006-07, 2007-08, 2008-09 and 2009-10 and even the Delhi High Court have dismissed the departmental appeal. For the assessment year 2006-07 and 2007-08 which is apparent from the order of the CIT(A). The finding of the CIT(A) which are reproduced as under :

*"I have considered the findings of the A.O. as well as submissions of the A/R of the appellant. **Ground no. 1 of appeal** is general in nature. **ground nos. 2, 3 & 4 of appeal** are directed against disallowance of agency commission amounting to Rs. 1,88,89,718/- by invoking provisions of Sec 40(a)(ia) of the I.T. Act, 1961. The assessee company during the year was engaged in the business of publication of fashion magazines. The A.O. in the assessment order observed that the audited P&L account as on 31.03.2011 shows amount of Rs. 15,62,23,710/- is debited on account of discount allowances. Out of Rs. 15,62,23,710/- an amount of Rs. 13,73,33,992/- relates to volume discount and balance amount of Rs. 1,88,89,718/- relates to the agency discount. The assessee company is engaged in the business of publication of a magazine and it sells space for advertisements to various parties through advertising agencies. AO observed that the assessee company raised bills in the name of advertising agencies indicating cost of the space and deducted the agency commission towards commission to the advertising agencies. This clearly indicates that the space was purchased from the assessee company on the basis of specifications by the actual party and the agency acted as an agent for*

the assessee company. There is no doubt that the same is being paid to the agencies for their services only and it cannot be termed as a discount as the benefit of that advertisement does not go to the agency. The agency on their part is getting the reimbursement of the entire amount from the customer to whom the real benefit of the advertisement accrues. Thus, the advertisement agency is in fact working for the assessee for providing them ads for the space for which they are being given commission. AO observed that the agent canvasses advertisement on behalf of the magazine (assessee) and advertisement charges recovered from the customers in accordance with the tariff prescribed by the magazine. AO, therefore, held that there is a clear cut relationship of Principal and agent and tax is deductible u/s 194H. The agency discount which is in fact agency commission is to be paid after deduction of taxes. As the assessee company failed to make TDS on the agency commission paid hence amount of agency discount of Rs. 1,88,89,718/- is disallowed by the A.O. u/s 40(a)(ia) and added to the income of the assessee company. Identical addition was made by the AO in A.Y. 2010-11 which was decided by me in the favour of the appellant in Appeal no. 76-12-13, dt. 27.12.2013 as under:-

“In this regard provisions sec 194H says:-

Commission or brokerage.

194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of [ten] per cent

From the above provision it is clear that any person who is responsible for paying any income by way of commission or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the prescribed rate. In the instant case no payments are made by the appellant to the agencies. On the other hand, consequent to the sale of space to the agencies, the agencies are billed by the appellant on the net amount after discount is allowed to them. Thereafter the payments are made by the agencies to the appellant on the net amount billed. In other words payments are not made by the appellant but by the agencies against sale of space by the appellant. Since, the assessee is

not responsible for making any payments to the agencies, therefore, there is no liability for deduction of income tax on the assessee. In view of the above, the provisions of sec 194H does not apply in the instant issue in appeal.

Identical additions were made by the A.O. in A.Y. 2006-07, A.Y. 2007-08 and A.Y. 2008-09 by making disallowance u/s 40(a)(ia) of Rs. 1.20 crores, Rs. 1.70 crores and Rs. 1.84 crores respectively on account of agency commission as he held that the relationship with the parties to whom the discount was given was based on principal to agent relationship. The additions made in the above years were deleted by Hon'ble ITAT Delhi in its decisions in I.T.A nos. 1990/Del 2010, 3741/Del 2011 & 5050/Del 2011 respectively for the above assessment years where it is held by Hon'ble Tribunal that transactions are based on principal to principal relationship. It was held by Hon'ble ITAT :

“The perusal of both the above mentioned transactions will reveal that assessee is giving discount with respect to volume as well as agency commission irrespective of the fact that whether the advertisement is booked by the advertiser itself or through advertising agency. The assessee did not collect gross amount and from gross amount itself straightway deduction has been granted to the person who has booked the advertisement on account of volume discount as well as agency commission. It may be seen that in the case of Moon River (M.G. Inds.) the advertisement has not been booked by advertising agency even then amount of Rs. 11,250/- has been reduced on account of agency commission. Therefore, it will clearly demonstrate that assessee is concerned only with the amount to be realized finally which is the same in both type of transactions. Therefore, the nature of amount agency commission is only a discount though it has been described as “agency commission”. Both the transactions are on principal to principal basis. The case law relied upon by the assessee before CIT (A) and before us supports the case of the assessee. Therefore, we are of the opinion that Id. CIT (A) is right in holding that disallowance could not be made as assessee was not under an obligation to deduct tax u/s 194H. We decline to interfere. This ground of the revenue for both the years is dismissed.”

On further appeal by the department against above ITAT decision, Hon'ble Delhi High Court in ITA No. 181 & 182/2012 in its decision dt. 16/03/2012 have dismissed the departmental appeal by holding that no substantial question of law arises from the decision of ITAT. Following the above decisions, identical additions made in AY 2009-10 was also deleted by me in appeal No. 379/11-12 dt. 15.02.2013.

The facts and circumstances of the issue in appeal is identical to the issue decided in AY 2006-07 to AY 2009-10. In view of the above factual and legal position, it is held that transactions between the appellant and the Ad Agencies are based on principal to principal basis. Therefore, appellant was not under any obligation to deduct tax u/s 194H. As such the disallowance of Rs. 1,61,18,029/- made by the A.O. u/s 40(a)(ia) cannot be sustained. The appeal is allowed in ground nos. 2 & 3 of appeal.”

As the issue in instant appeal is identical, therefore, following the above decision for A.Y. 2010- 11 the issue is decided in favour of the appellant. The appeal is allowed in this ground.”

4. Since the issue involved in this year is also the same as in the earlier year. We, therefore, do not find any illegality or infirmity in the order of the CIT(A) which warrant our interference. We accordingly dismiss the appeal filed by the revenue.

5. In the result, appeal filed by the revenue is dismissed.

(Order Pronounced in the Open Court on 11/12/2017)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

Sd/-
(P.K.Bansal)
VICE PRESIDENT

DATED: 11 .12.2017

Binita

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar

		Date	<u>Initial</u>	
1.	Draft dictated on	11/12/2017		
2.	Draft placed before author	11/12/2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on	/12/2017		
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			

