

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA 'B' BENCH,
KOLKATA**

Before : **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A. No. 997/Kol/2015
A.Y : 2011-12

DCIT, Circle-1, Durgapur

Aayakar Bhawan, City Centre,
Durgapur-713216

.... Appellant

-vs-

Rajesh Falor

A-36, Armstrong Avenue, Sector-2A,
Bidhannagar, Durgapur-713212
PAN: AACPF 9864 D

....Respondent

Appearances by:

For Appellant Revenue Shri: Saurabh Kumar, Addl. CIT(DR)
For Respondent Assessee : Shri Arvind Agarwal, Advocate

Date of hearing : 01-11-2017
Date of pronouncement : 19-01-2018

Shri. S.S.VISWANETHRA RAVI, JM:

1. This appeal by the Revenue in his order dated 26.05.2015 passed by the CIT(A)-Durgapur for assessment year 2011-12.

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2. The only issue to be decided in this appeal is as to whether the CIT(A) is justified in deleting the addition made by the AO in the facts and circumstances of the case.

3. The Ld. DR relied on the order of AO. The Ld. AR submits that the assessee is an individual and is a registered sub-broker and engaged in assisting his main broker Shri Bahubali International Ltd. in security transaction. The issue on hand is with regard to payment made to remissiers for services rendered in introducing clients to the broker for dealing in securities, out of commission received from main broker as sub-broker and whether the said payment attract deduction of tax at source u/s 194H of the Act or not.

4. The Ld. AR submits that the issue in hand is covered by the order dated 14.11.2014 of this Tribunal in assessee's own case in I.T.A no. 1818/Kol/2012 and referred to para no-5 of the said order which is at page no. 29 of the paper book and argued the CIT(A) rightly deleted the addition made by the AO by placing reliance on the order of Tribunal.

5. Heard the rival submissions and perused the material available on record. We find that the AO made the disallowance of payment made to the remissiers on account on non-deduction of TDS u/s 194H of the Act. This Tribunal in assessee's own case for assessment year 2009-10 to decided the similar issue in favour of assessee in terms of Explanation-1 to section 194 of the Act. The relevant portion of which is reproduced herein below:

"5. We have considered the rival submissions. Admittedly, there is no dispute that the amount paid was a commission to the remiser and the transaction was in respect of purchase and sale of securities in the stock exchange. A perusal of the order of the Ld. CIT(A) clearly shows that he has accepted the fact that the commission has been paid on

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behalf of Shree Bahubali International Ltd., the principal and the broker. A perusal of the Explanation (i) to Section 194 does not in any way make any distinction between brokers and sub-brokers. It only says that the provision of section 194H would not apply in respect of commission in respect of purchase and sale of securities. In these circumstances, respectfully following the decision of this Co-ordinate Bench of this Tribunal, the findings of the AO and the Ld. CIT(A) stand reversed and the addition stands deleted. Therefore, this ground of the assessee stands allowed. No other grounds have been specifically argued."

6. In view of the above, we do not find any infirmity in the order of CIT(A). Accordingly, grounds raised by the Revenue are dismissed.

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

Order pronounced in the open Court on **19-01-2018.**

Sd/-
J.Sudhakar Reddy
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Date: 19-01-2018

SB,Sr. PS

Copies to :

- (1) Appellant/Department: DCIT, Circle-1, Durgapur
- (2) Respondent/Assessee: Rajesh Falor
- (3) Commissioner of Income-tax (Appeals)
- (4) Commissioner of Income Tax, Kolkata
- (5) The Departmental Representative
- (6) Guard File

By order

Sr.PS/H.O.O
ITAT, Kolkata

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