

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

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos. 503/Chd/2014
(Assessment Year : 2008-09)

The DCIT
Circle 1(1)
Chandigarh

Vs.

Dhingra Associates
89, Indl Area Phase II
Chandigarh

PAN: AACD6033E

(Appellant)

(Respondent)

Assessee by	:	None
Department by	:	Smt. Chandrakanta
Date of hearing	:	19.02.2018
Date of Pronouncement	:	12/04/2018

ORDER

PER Dr.B.R.R.KUMAR, A.M. :

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A), Chandigarh dt. 27/02/2014.

2. The assessee has raised the following grounds of appeal :

1. *The order of the Ld. CIT(A) is erroneous & contrary to facts & Law.*
2. *Keeping in view the circumstances of case, the Ld. CIT(A) has erred in deleting the addition of Rs. 10,35,892/- made by the AO in view of provision of section u/s 40A(2)(a) of the I.T. Act.*
3. *Keeping in view the circumstances of case, the Ld. CIT(A) has erred in allowing the relief of Rs. 97,41,567/- being the amount disallowed by the AO on the account of non deduction of TDS u/s 40(a)(ia) of the Act on turnover discount.*

3. Ground No.1 pertains to disallowance under section 40A(2)(a) of the Income Tax Act,1961 of Rs. 10,35,892/- on account of purchases made from M/s Dhingra Agencies [a sister concern under section 40A(2)(b)] of Rs. 10,35,89,20/-. The Assessing Officer held that the assessee paid 10% more for the items purchased from the sister concern.

4. The Ld. CIT(A) deleted the addition on the grounds that the assessee was getting credit facilities and schedule of payments as per its own choice pertaining to those purchases and hence no disallowance is warranted.

5. Before us, the Ld. DR strongly relied on the order of the Assessing Officer. We have carefully considered the submission of the Ld. DR and perused the facts on record.

6. Before the lower authorities the assessee submitted that M/s Dhingra Agencies is a trading concern and into business for the last many years and a well known entity in fabric manufacturing. The assessee gets liberty to pay in installments for the purchases of the goods made from M/s Dhingra Agencies. The assessee has given comparative charts of profits from various entities which shows the assessee has got the goods at a cheaper rate than purchases made directly from the open market. We also observed that the Assessing Officer has succinctly mentioned in the remand report that it cannot be established that the same fabric was purchased from M/s Dhingra Agencies and so comparison is not possible. The Assessing Officer has observed in the remand report that from the bill submitted, the nature of the fabric purchased from M/s Dhingra Agencies and from outside cannot be ascertained. Hence, in the absence of any comparison of goods the disallowance made by the Assessing Officer is liable to be deleted.

7. Though the Ld. DR argued that both the entities are paying tax @30% is not a relevant to delete the addition, we observe that it would be a matter to be considered while dealing with disallowance under section 40A(2)(a) among related entities. And in the instant case since both the entities are in the taxed at the same rate, even if it is assumed that the prices of goods are altered to the advantage of one entity do not hold any valid rationale or tax savings on the part of the business entities. Every purchase from the sister concern need not necessarily attract the provisions of Section 40A(2)(a) without considering the legitimate business requirements and in the absence of any evidence establishing payment which is excessive or unreasonable having regard to the fair market value of the goods.

8. Since in the instant case, as the Assessing Officer has not even ascertained the goods purchased and price vis –a-vis market rates. Hence we decline to interfere in the order of the Ld. CIT(A) deleting the addition.

9. Appeal of the Revenue is dismissed on this ground.

10. Ground No. 2 relates to non deduction of TDS on the turnover discount given to Franchise Stores and the addition of Rs. 9741567/- under section 40(a)(ia).

11. The Assessing Officer held that the assessee was required to deduct TDS on turnover discount after going through the agreements between the assessee and its franchises.

12. Ld. CIT(A) deleted the addition.

13. Before us, the Ld. DR heavily relied on the order of the Assessing Officer. We have carefully considered the arguments of the Ld. DR and perused the facts on record.

14. The assessee firm is engaged in Manufacturing and Sale of Readymade Garments. The Sale is effected through Dealers and Retailers whom the Assessee Firm Bills the Inventory of Stock Sold. In turn the Dealer/Retailer Purchasing Merchandise from the Assessee sells the same in Open Market after levying applicable Sales Tax and such Sale is duly including in Sale Turnover of the said Dealer/Retailer. In other words, Assessee is selling to Dealers/Retailers who further are Selling Merchandise purchased from Assessee Firm in the Open Market against their Sales Tax Number. In the process Both the Parties are levying applicable Sales Tax and such Sales conducted is part of Gross Sale of Dealer/Retailer. Certificates of the Parties confirming the fact of Sale of Goods which shall clarify the matter alongwith Bills of sale issued by the Assessee to such Parties after Levying Sales Tax and on Receipt of "C" Form for Inter State Sale issued by Sales Tax Authorities are produced before the lower authorities.

14.1 It is also observed that the assessee firm has billed these franchisees for the goods sold to them. The transactions are on principal to principal basis. These franchisees have sold the goods in the open market and have duly charged applicable sales tax. The franchisees dealers are registered with the Sales Tax department and have their own sales tax numbers. The goods are sold to franchisees/ dealers at a price which is arrived at by deducting an agreed percentage, which is termed as discount from the MRP. As long as the sales are on principal to principal basis and not on principal to agent basis, the discount cannot be treated as 'commission'. Commission means to recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. A fee paid to an agent or employee for transacting a piece of business or performing a service. Compensation to an administrator or other fiduciary for the faithful discharge of his duties whereas Discount means, an allowance or deduction

made from a gross sum on any account whatever. A deduction from an original price or debt, allowed for paying promptly or in cash is a discount.

14.2 In the case of Government Milk Scheme v. Assistant Commissioner of Income-tax (2006)-281-ITR (A.T.)-0088-ITAT (Pune), it was held that for a payment to fall within the category of commission there must be a relationship of principal and agent. The commission is compensation to an agent for services to be rendered. It is an allowance or reward made to agents. This is calculated on a percentage basis on the amount of the transaction or the profits to the principal. There is a distinction between a contract of sale and a contract of agency. Through a contract of agency, an agent is authorized to sell or buy on behalf of the principal. On the other hand, the essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid. In the context of a contract of sale, the transferee is liable to the transferor as a debtor for the price paid and not as an agent for the proceeds of the sale. The distinction between the two is apparent because the essence of "agency to sell" is the delivery of goods to a person who is to sell them not as his own property but as the property of the principal who continues to be the owner of the goods".

15. In the present case we find that the turnover discount was given to the various franchisees as per the terms & conditions mentioned in the respective agreements and so it cannot be said that the turnover discount was in the form of commission, since the goods were not sold to them on commission basis, but turnover discount was given as per the agreements entered with these parties. Therefore, it cannot be said that the turnover discount is in the form of commission and the assessee was liable to deduct, tax at source on this payment hence we decline to interfere in the order of the Ld. CIT(A). By following the above discussion we dismiss ground no. 2 of the Revenue

16. As a result, appeal of the Revenue is dismissed.

Order pronounced in the open Court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Dated : 12/04/2018
AG

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR