IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI

BEFORE SH. N.K. SAINI, ACCOUNTANT MEMBER
AND
SH. LALIET KUMAR, JUDICIAL MEMBER

ITA No.4072/Del/2015
Assessment Year: 2008-09

ACIT, Circle-54(1), Room No. 1502, 15th Floor, E 2 Block, Dr. S.P.M. Civic Center, J.L.N. Marg, New Delhi	**Vs.**	National Agricultural Cooperative Marketing Federation of India, NAFED House, Ashram Chowk, New Delhi
PAN :AAAAN4629F		
(Appellant)		**(Respondent)**

Appellant by	Sh. Ravi Kant Gupta, Sr.DR
Respondent by	Sh. Hiren Mehta, CA

Date of hearing	10.07.2018
Date of pronouncement	11.07.2018

ORDER

PER LALIET KUMAR, J.M.:

The present appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-18, New Delhi, dated 30.03.2015, for assessment year 2008-09, on the following ground:

1. *The CIT(A) has erred in deleting the addition of Rs.5,82,52,900/- made by the AO u/s 40(a)(ia) of the IT Act, 1961 when there was relation of Principal and Agent between the two as per Agreement and when state/district/primary level co-operatives were working as procurement agents of the assessee and the provisions of section 194H read with section 40(a)(ia) of the I.T. Act were clearly applicable.*

2. At the outset, the learned Authorized Representative for the assessee has brought to our notice that the issue involved in the

present appeal is covered in favour of the assessee by the earlier decision of ITAT, Delhi rendered in the assessee's own case in ITA No. 301/Del/2011, dated 18.04.2012.

3. The learned Departmental Representative has not disputed the submission made by the learned Authorized Representative.

4. We have heard the rival contentions of the parties and perused the relevant material on record. We find that the issue involved in the present appeal has already been decided by ITAT, Delhi bench in favour of the assessee in assessee's own case passed in ITA No. 301/Del/2011 (AY: 2007-08), dated 18.04.2012. The relevant findings of the Tribunal in the aforesaid case are as under:

> *"2.2 In regard to ground No. 2, the finding of the AO is that the amount of Rs. 35,25,04,787/- represents service charges, society charges, Samiti charges and commission paid to various district level, primary level are State level Cooperative Societies. There is a relation of Principal and Agent between the payer and payee. Therefore tax should have been deducted u/s 194H. In absence of doing so, the amount has to be disallowed u/s 40(a)(ia) of the Act. On this ground also, the admitted position is that the issue stands covered by the order of 'A' Bench of Jaipur Tribunal in the case of National Agricultural Cooperative marketing Federation of India Ltd for asstt. Years 2006-07 to 2009-10 in ITA Nos. ITA No. 301/Del/11 Asstt. year 2007-08 4 23,24,50 & 51/JP/2010 dated 31.8.2010. The finding of the Tribunal recorded in paragraph No. 7.1 is that the instant Commissions are the society charge mentioned in VAT invoice of the societies, selling goods to the assessee and it is not a payment of commission as understood u/s 194H. Therefore, there is no liability fastened on the assessee to deduct tax from such payments. Consequently the provision containing 40(a)(ia) is not applicable. This paragraph is reproduced below for ready reference:-*

"7.1 From the above it is held that the societies commission/charge mentioned in the VAT invoice of the societies, selling goods to the assessee, is not a payment of the commission as envisaged in section 194H and therefore, there is no liability on the assessee to deduct tax at source on such payment of purchase price which includes the payment of societies charges. Very recently the Hon'ble Punjab & Haryana High Court in the case of CIT (TDS) vs. Assistant Manager (Accounts), Food Corporation of India 326 ITR 106 on identical facts has observed as under :-

> *"The assessee in the present case is Food Corporation of India which is engaged in procurement of food grains for the Central pool. The food grains is procured through the State Agencies and directly as well. Proceedings were initiated u/s 201 of eth Income-tax Act, 1961 with the allegation that the assessee had failed to deduct tax at source on the interest, rent and transportation charges paid by it to various agencies. The order came to be passed by the ITO (TDS) on Feb. 25, 2005, raising a demand of ` 12,34,814/-. The order was upheld by the Commissioner of Income Tax (Appeals). In further appeal before the Tribunal, the plea set up by the assessee was accepted. It was noticed that in the invoices raised by various State agencies who procured food grains on behalf of the assessee, the cost of wheat has been shown apart from the cost on account of other incidental expenses incurred by the procurement agencies. VAT had also been charged. It was not evident from there that the expenses so incurred by the procurement agencies were on behalf of the assessee rather it was found to be part of the cost at which the foodgrains were to be transferred by the procurement agencies to the assessee. With these facts, it was found that as the assessee had not paid any amount to the procurement agencies on account of transportation, interest or storage charges as such, accordingly there was no liability for deduction of tax.*
>
> *The contention of the learned Counsel for the Revenue that in fact all these factors had been taken care of while fixing the price at which the food grain was to be billed to the assessee, carries no weight. If expenses incurred by a person on account of transportation, interest, storage etc. are added to the cost of the goods, it cannot be inferred that the person who is billed had paid certain amount on account of those services separately as the same becomes part of the commodity so sold.*

For the reasons mentioned above, we do not find any substantial question of law arises in the present appeal. The same is accordingly dismissed."

Placing reliance on the above decision and the facts and circumstances discussed in foregoing paragraphs, we are of the view that the finding of lower authorities that society commission charged in the sale bills by these societies is a payment of commission by assessee in terms of section 194H is not correct as per law and accordingly the issue is decided against the Revenue. Thus Ground No. 1 of all the appeals of the assessee are allowed.

3.1 Respectfully following this decision, the issue is decided in favour of the assessee. Thus ground No. 2 is also dismissed."

5. Respectfully following the decision of the coordinate bench (supra), we, therefore, find no merit in the order of the learned Commissioner of Income Tax (Appeals). Accordingly, the ground raised by the Revenue is dismissed.

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

The decision is pronounced in the open court on 11th July, 2018.

Sd/-	Sd/-
(N.K. SAINI)	**(LALIET KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 11th July, 2018.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi