

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA**

[Before Shri P.M. Jagtap, Vice-President & Shri S.S. Godara, JM]

I.T.A. No. 2168/Kol/2017
Assessment Year: 2011-12

ACIT Circle 30, Kolkata.....Appellant
2, Gariahat Road (South),
Aayakar Bhawan Kakshin,
Kolkata – 700 068.
[PAN: ACKPT 3796]

Shri Nisheeth Kumar Totla.....Respondent
4A/1, Motilal Nehru Road, Rashbehari,
Kolkata – 700 029.

Appearances by:

Shri Robin Chowdhury, Addl. CIT appearing on behalf of the Revenue.
Shri Vikash Surana, AR appearing on behalf of the Assessee.

Date of concluding the hearing : September 19, 2018

Date of pronouncing the order : October 26, 2018

ORDER

Per P.M. Jagtap, Vice-President

This appeal is preferred by the revenue is directed against the order of Ld. CIT(Appeals) – 8, Kolkata dated 28.07.2017.

2. The main two issues involved in this appeal of the assessee are interlinked and the same are raised in the present appeal by way of Ground No. 1 and 2 which read as under:

“1. That the Ld. CIT(A) has erred in facts and in law in allowing the incorrect claim in difference of commission income as reported in 26AS vis-a-vis his books of accounts.

2. That the Ld. CIT(A) has erred in facts and in law in deleting the addition made u/s 40(a)(ia) r.w. section 194H of the Act.”

3. The assessee in the present case is an individual who is engaged in the business of trading of paper and paper boards. The return of

income for the year under consideration was filed by the assessee on 30.09.2011 declaring a total income of Rs. 21,46,290/-. During the course of assessment proceedings, it was noticed by the A.O. that the total commission credited by the assessee in the profit and loss account was Rs. 53,68,216/- while as per Form No. 26AS, the assessee had actually received total commission of Rs. 1,32,31,212/-. There was thus a difference of Rs. 78,62,996/- in the commission income declared by the assessee which was explained by the assessee before the A.O. by submitting that the commission income received by him was partly passed on to the various customers and the same was set off against the total commission income received thereby showing only the net commission income as credited in the profit and loss account. This explanation of the assessee was not found satisfactory by the A.O. and the difference of Rs. 78,62,996/- in the commission income was added by him to the total income of the assessee by treating the same as unaccounted income of the assessee.

4. The Assessing Officer also found that the commission of Rs. 77,56,444/- paid by the assessee was shown under the head "Discounting Charges Paid" and tax at source was deducted by the assessee from the payment thereof only to the extent of Rs. 10,16,179/-. According to him, the assessee was liable to deduct tax at source from the balance amount to the extent of Rs. 67,14,265/- as per the provisions of section 194H and since there was a failure on the part of the assessee in complying with the said requirement, he invoked the provisions of section 40(a)(ia) and made addition of Rs.67,14,422/- .

5. Both the additions of Rs. 78,62,996/- and Rs. 67,14,422/- made by the A.O. were challenged by the assessee in the appeal filed before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), it was submitted by the assessee, that as a dealer of paper mills, he was selling paper in bulk quantities on behalf of the paper mills to the corrugation industry. The invoices for such sales were being raised by the paper mills directly on the customers and the assessee was getting sales commission on such sale from the paper mills which constituted his main income. The responsibility of recovery from the customers was that of the assessee and in an order to encourage early payments, cash discount was being offered by the assessee to the customers. This discount offered by the assessee during the year under consideration amounting to Rs. 67,40,265/- was debited to discount charges account and the same was adjusted against commission income received from the paper mills. It was also submitted on behalf of the assessee before the Ld. CIT(A) that similarly that the commission paid to the sub-agents who helped in getting the orders from the customers amounting to Rs. 10,16,179/- was adjusted against the commission income and the net commission income of Rs. 53,27,556/- was credited in the profit and loss account. It was contended that all these entries were duly reflected in the books of account of the assessee and there was no commission income that had remained unaccounted as alleged by the A.O. It was also contended that the discount offered by the assessee to the customers was not in the nature of commission and in the absence of any principal agent relationship between the assessee and the

customers, the provisions of section 194H were not applicable to the discount of Rs. 67,40,265/- offered by the assessee to his customers. The Ld. CIT(A) found merit in the submissions made on behalf of the assessee and deleted both the additions made by the A.O. on account of alleged unaccounted commission and the disallowance u/s 40(a)(ia).

6. We have heard the arguments of both the sides on these issues and also perused the relevant material available on record. Although the learned DR has contended that the difference in commission amount was not properly explained by the assessee, we find that the same was duly explained by the assessee before the A.O. as well as before the Ld. CIT(A) by submitting that the commission income to the extent passed on to the various customers was adjusted against the commission income and only the net amount of commission was credited to the profit and loss account. Although the Assessing Officer could not properly appreciate this explanation offered by the assessee and rejected the same as unsatisfactory, we find that the same was properly appreciated and rightly accepted by the Ld. CIT(A) after taking into consideration the corresponding entries recorded in the books of account of the assessee and the example given by the assessee explaining the entries in the books of account. As rightly held by the Ld. CIT(A) on such appreciation, the entire commission income received by the assessee was duly accounted for and there being no commission income that had remained unaccounted for as alleged by the A.O., we are of the view that the Ld. CIT(A) was fully justified in deleting the addition made by the A.O. on account of the alleged

unaccounted commission income. We also find that the discounting charges paid by the assessee to his customers, going by its very nature, was not in the form of commission to which provisions of section 194H was applicable and in the absence of any principal-agent relationship between the assessee and his customers, there was no requirement of deduction of tax at source u/s 194H. Consequently, the disallowance made by the A.O. u/s 40(a)(ia) was not sustainable and the Ld. CIT(A), in our opinion, was fully justified in deleting the same. We, therefore, find no justifiable reason to interfere with the impugned order of the Ld. CIT(A) giving relief to the assessee on both these issues and upholding the same, we dismiss ground no. 1 and 2 of the assessee's appeal.

7. As regards the issue involved in ground no. 3 relating to the deletion by the Ld. CIT(A) of the addition of Rs. 1,83,687/- made by the A.O. on account of the alleged unaccounted transport charges on the basis of Form No. 26AS, it is observed that the said amount received by the assessee on account of recovery of transport charges was adjusted by the assessee against carriage inward expenses and the same, therefore was not separately reflected to the credit side of the profit and loss account. There was thus no suppression of any income on account of transport charges received by the assessee as alleged by the A.O. and the addition made for the same by the A.O. was not sustainable which, in our opinion, is rightly deleted by the Ld. CIT(A). We, therefore, find no merit in this ground of the Revenue and dismiss the same.

8. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 26th October, 2018.

Sd/-
(S.S. Godara)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 26/10/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Nisheeth Kumar Totla, 4A/1, Motilal Nehru Road, Rashbehari, Kolkata – 700 029.
2. ACIT, Circle 30, 2, Gariahat Road (South), Aayakar Bhawan Dakshin, Kolkata – 700 068.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata