

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI K.N. CHARY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 4970/Del/2013
(Assessment Year: 2008-09)**

Shri Puneet Kumar, M/s Anmol Telecom, Delhi Garh Road, Opp. Ritu Collection, Pilkhuwa (Ghaziabad).	Vs.	Commissioner of Income Tax (Appeal), Muzaffarnagar.
PAN No: AAZPK8005A		
APPELLANT		RESPONDENT

Assessee by : Shri K. Sampat, and
Shri. V. Raj Kumar, Adv.
Revenue by : Shri Surender Pal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by the Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals), Muzaffarnagar dated 05.06.2013 for Assessment Year 2008-09, on the following grounds:

- "i. *That the Ld. AO had erred in making an aggregate disallowance of Rs. 8,88,480/- in respect of payments of discount/commission to customers as debited to Profit and Loss Account.*

- ii. *That the Ld.CIT(A) also erred in law and on facts in maintaining the aforementioned addition of Rs. 8,88,480=00 subject to allowance of payments made below Rs. 2,500/- with the observations that provisions of Sec 194-H are not attracted on such payments.*
- iii. *That the observations made by the Ld. CIT(A) in maintaining the aforementioned addition as submitted in ground No. 2 above are inconsistent with the factual and legal position of the case.*
- iv. *That on the basis of facts and legal position of the case, the entire addition of Rs. 8,88,480/- made by the Ld. AO and as maintained by the Ld. CIT(A) deserved to be deleted in toto.*
- v. *That the appellant very humbly prays to reserves his right to add, amend or modify the grounds of appeal."*

(2) The Assessee is a dealer of Idea Mobile Comm. Ltd. During the year, the Assessee received commission amounting to Rs. 18,18,809/- on sales, which was in addition to the gross profit of Rs. 6,95,676/- earned by the assessee, on gross sales of Rs. 3,50,37,283/-. The Assessee claimed deduction of Rs. 8,88,480/- towards expenses on account of discount / commission. The Assessing Officer ("AO", for short) disallowed the aforesaid claim of Rs. 8,88,480/-. The relevant portion of the Assessment Order is reproduced as under:

*"The assessee is a dealer of Idea Mobile Comm. Ltd. He also enjoyed income from commission and incentive etc on sales. On gross sale Rs.3,50,37,283/- gross profit was shown at Rs.6,95,676/- and gross profit rate of 1.99% against the gross profit rate of 1.97% last year. P & L account reveals that assessee has received commission on sales at Rs. 18,18,809/- and accordingly discount/commission payment expenses of Rs. 8,88,480/- have been claimed in P & L a/c. It was stated that discount/commission has been paid as per directions by the telecom co. but no such copy/evidence of directions were furnished before AO. On being asked for details and evidence regarding payments actually made, the counsel of the assessee filed copies of vouchers said to be sale bills'. In this respect consolidated account has been prepared. The assessee was required vide order sheet to show cause why the expenses of Rs. 8,88,480/- may not be disallowed. Shri Sandeep Gupta Advocate attended and filed reply and photocopy of said bills, it is observed that out of Rs. 8,88,480/- the copies of bills of Rs.4,16,373/- filed by the assessee are **prepared against total sales during the day and marked discount to customers which cannot be verified in view of the facts that nowhere name and address of***

the recipients of discount/commission mentioned/furnished. Thus no genuineness is found in claim by assessee and expenses of Rs. 4,16,373/- out of total claimed at Rs. 8,88,480/- are disallowed. Further in remaining portion of said expenses- -i.e. Rs.4,72,107/- copies of said bills bear stamp and sign of some customers but neither names and addresses of these so called customers receiving discount/commission have been mentioned in the list bills furnished nor original bills ever produced before the AO during the course of assessment proceedings. In view of these facts this amount of Rs. 4,72,107/- is also not verifiable and disallowed. These so called discount/commission payments of Rs. 8,88,480/- also contain payments of more than Rs. 2,500/- to single customers but no TDS has been made and payments are said to be paid in cash. Some cases for example are as under:

<i>Bill No.</i>	<i>Date</i>	<i>Amount</i>
<i>187</i>	<i>20-04-2007</i>	<i>Rs. 2,550</i>
<i>204</i>	<i>-do-</i>	<i>Rs. 4,250</i>
<i>213</i>	<i>21-04-2007</i>	<i>Rs. 3,215</i>
<i>492</i>	<i>07-05-2007</i>	<i>Rs. 6,035</i>
<i>545</i>	<i>11-05-2007</i>	<i>Rs. 3,200</i>

Likewise there are no. of so called bills which reveal that the said payment is above Rs. 2,500/- but No TDS made. Thus claim of the regarding payments of Rs. 8,80,480/- against discount/commission is treated as bogus and disallowed. Penalty proceedings for concealment of income and its particulars u/s 271 (1) (c) of the Income Tax Act, 1961 is initiated separately. [Addition: Rs.8,88,480/-]

(3) The Assessee filed appeal before the Ld. CIT(A) against the aforesaid addition. Vide order dated 05/06/2013, the Ld. CIT(A) held that the provision of Section 194H of the Income Tax Act, 1961 ("I.T. Act", for short) are applicable in respect of discount / commission amounting to or exceeding Rs. 2,500/-.

(3.1) This appeal has been filed by the Assessee against the aforesaid order dated 05/06/2013 of Ld. CIT(A). During the appellate proceedings, the assessee filed **Paper Book** containing the following particulars:

"1. *Written submissions filed before CIT(A)*

2. *Copy of letter dated 26.11.2010 filed before AO.*
3. *Copy of letter dated 18.11.2010 filed before AO.*
4. *Copy of letter dated 08.11.2010 filed before AO.*
5. *Copy of reply letter to show cause*
6. *Copy of Agreement between Idea Co. & Appellant.*

(4) At the time of hearing before us, the Ld. Counsel for assessee submitted that the aforesaid payments totaling Rs. 8,88,480/- were in the nature of 'trade discount' and not in the nature of 'commission'; and accordingly, he contended that Section 194H of the I.T. Act, had no application and the Assessee was under no statutory obligation to deduct TDS U/s 194H of I.T. Act. He took us through the **Paper Book** and orders of the lower authorities to make the point that there was no relationship of Principal and Agent between the Assessee and the parties to whom, the aforesaid payments totaling Rs. 8,88,480/- were made. On the other side, the Ld. Departmental Representative ("DR", for short) relied on the orders of the Ld. CIT(A) and the AO; and he read out portions from these orders.

(5) We have heard both sides patiently and we have carefully perused the materials available on record. We have considered the judicial precedents brought to our attention. We find that the order of the Ld. CIT(A) is silent, on how the Ld. CIT(A) came to the conclusion that the payments made by the assessee were "commission" as envisaged U/s 194H of I.T. Act5t6. The order of the Ld. CIT(A) is also silent on how he concluded that relationship between the assessee and the parties to whom the payments were made were in the nature of relationship of Principal and Agent.

Therefore, his conclusion that Section 194H of I.T. Act was applicable and disallowance U/s 40a(ia) of I.T. Act was attracted for amounts equal to or exceeding Rs. 2,500/-; is without proper discussion of relevant facts. The order of Ld. CIT(A) is not a speaking order, on these relevant aspects of the case. Therefore, we are of the view that the issue in dispute requires fresh consideration and denovo order at the level of the CIT(A). Accordingly, we set aside the impugned order dated 05/06/2013 of Ld. CIT(A) and restore the disputed issue to the file of the Ld. CIT(A) for a denovo order, which should be a speaking order containing adequate discussion on relevant aspects of the case; and in accordance with law.

(6) In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 15th day of January, 2019.

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 15.01.2019
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	14 /01/19
Date on which the typed draft is placed before the dictating Member	15 /01/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	