

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1329/JP/2018  
निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT, Circle, Sikar.	बनाम Vs.	M/s Sikar & Jhunjhunu Zila Dugdh Utpadak Sahakari Sangh Ltd., NH-11, Palasana, Distt. Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABAS 0852 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Karani Dan (JCIT)  
निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)

सुनवाई की तारीख / Date of Hearing : 06/08/2019  
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order of dated 11.09.2018 of the Id. CIT(A)-3, Jaipur for the assessment year 2014-15.

The Revenue has raised the following grounds:-

*"(i) On the facts and in the circumstances of the case, whether the Id. CIT(A) was justified in deleting the addition of Rs. 2,81,93,209/- made u/s 40(a)(ia) of the Act by the AO and holding thereby that payment of Rs. 2,81,93,209/- made to various milk societies on account of milk price difference, is not liable for TDS u/s 194H, ignoring the substance of the matter that*

*such milk societies provide service of facilitating purchase of milk by the assessee from cattle owners and are liable for TDS?*

*(ii) The appellant craves leave to add, alter, amend, withdraw or insert any ground or grounds of appeal before or at the time of hearing of the appeal."*

2. We have heard the Id. DR as well as the Id. AR and considered the relevant material on record. The AO has made disallowance U/s 40(a)(ia) of the Act in respect of the payments made to Primary Cooperative Society for purchase of milk and the difference was treated as commission was liable for TDS U/s 194H of the I.T. Act. The Id. CIT(A) deleted the said disallowance made by the AO by following the decision of this Tribunal in assessee's own case. The relevant finding of the Id. CIT(A) in para 4.3 is as under:-

*"4.3 I have carefully considered the material before me. I find that the same issue already decided in the appellant own case by the Hon'ble ITAT Jaipur Bench while decision the ITA No. 82 to 86/JP/2015 order dated 04.03.2016 as under:-*

*" We have heard the rival contentions of both the parties and perused the material available on the record. The assessee purchased milk from the primary society not from the cattle owners. The payments are made to the primary society. The price of the milk is decided on the basis of fats by the assessee, the milk is processed in the plant of the assessee but at the stage of testing, the risk and reward is with the primary society. The assessee paid 3% on cost of the purchase price of milk to the primary society. The relationship between the assessee and primary society is principal to principal basis. It is undisputed fact*

*that the purchase price and purchase difference has been claimed by the assessee under two heads but expenses debited under the purchase difference is cost of goods purchased. By respectfully following the Coordinate Bench decision in assessee's own case for A.Y. 2008-09 we hold that the assessee is not liable to deduction TDS U/s 194H of the Act. Accordingly, assessee's appeal is allowed and revenue's appeal is dismissed. 26. In the result, all the appeals of the assessee are allowed"*

*The facts to this assessment year is also identical. Therefore following the above decision of the Hon'ble ITAT Jaipur bench in the appellant own case as discuss above I am the view that appellant is not liable to deduct tax at source u/s 194H of the IT Act. Hence I direct the Assessing officer to delete the addition of Rs. 2,81,93,209/-/ This ground is allowed."*

Thus, the Id. CIT(A) referred to the decision of this Tribunal dated 04.03.2016 for the assessment years 2006-07 to 2010-11. We further note that the Tribunal in assessee's own case for the assessment years 2008-09, 2012-13 & 2013-14 has also deleted the identical disallowance made by the AO. The Tribunal for the assessment year 2013-14 vide order dated 11.01.2017 in ITA No. 950/JP/2016 has again considered this issue in para 2.1 to 2.4 are as under:-

*"2.1 At the outset of hearing, the Id. AR of the assessee relied on recent order dated 14-09-2016 of the ITAT, Coordinate Bench, Jaipur in assessee's own case in ITA No. 33/JP/2016 for the assessment year 2012- 13 which has been decided against the Revenue. For the sake of convenience, the observation of ITAT Jaipur Bench in the case of the assessee is as under:-*

*'2.1 At the outset of the hearing, the Id. AR of the assessee submitted that the issues raised by the Revenue in this appeal are covered vide order dated 04-03-2016 of ITAT Coordinate Bench in assessee's own case (in ITA No. 87/JP/2015 for the assessment year 2011-12 and in ITA No. 96/JP/2015 of Revenue for the assessment year 2011-12). The Id. AR further submitted that the Id. CIT(A) has granted the relief to the assessee on the basis of decision of the ITAT Coordinate Bench in assessee's own case for the assessment year 2008-09 in ITA No. 277/JP/2013 – assessee and in ITA No. 383/JP/2013 – Revenue by observing at para 4.3. of his order which is reproduced as under:-*

*'4.3 I have carefully considered the facts of the case and the submission of the Id. AR. AO made the disallowance of Rs. 1,77,66,242/- by holding that payment of milk price purchase difference to milk societies is payment of commission and therefore, assessee is liable for deduction of tax at source u/s 194H which it failed to deduct. The Id. AR argued that total bill for milk purchase and margin is raised by the societies itself and milk price purchase difference represents margin of profit. Further, the similar disallowance was made in A.Y. 2008-09 which has been deleted by the Hon'ble ITAT vide its order dated 14-07-2015. It is seen that the Hon'ble ITAT in assessee's own case for A.Y. 2008-09 wherein similar disallowance was made, decided this issue in favour of the assessee by holding as under:-*

*'Apropos payment of milk price difference, the assessee society does not purchase milk from cattle owner as mistakenly held by Id. AO. Since the liability has been fastened under misconception of facts, we hold that this payment also is not liable u/s 194H of the Act. In view thereof, second ground of the assessee with regard to disallowance u/s 40(a)(ia) stands allowed."*

*Respectfully following the same, the disallowance made by the AO is deleted."*

*2.2 The Id. DR relied on the order of the AO.*

*2.3 We have heard the rival contentions and perused the materials available on record. It emerges from the record that in the case of the assessee, relief has been granted by the Id. CIT(A) on the basis of the decision of ITAT Coordinate Bench in assessee's own case (supra). Hence, respectfully following the decision of Coordinate Bench in assessee's own case (supra), we dismiss the appeal of the Revenue."*

*2.2 In this appeal of the assessee, the Id. CIT(A) deleted the disallowance made by the AO u/s 40(a)(ia) of the Act by observing as under:-*

*'4.3 I have carefully considered the facts of the case and the submission of the Id. AR. AO made the disallowance of Rs. 1,69,68,809/- by holding that payment of milk price purchase difference to milk societies is payment of commission and therefore, assessee is liable for deduction of tax at source u/s 194H which it failed to deduct. The Id. AR argued that total bill for milk purchase and margin is raised by the societies itself and milk price purchase difference represents margin of profit. Further, the similar disallowance was made in A.Y. 2008-09 which has been deleted by the Hon'ble ITAT vide its order dated 14-07-2015.*

*It is seen that the Hon'ble ITAT in assessee's own case for A.Y. 2008-09 wherein similar disallowance was made, decided this issue in favour of the assessee by holding as under:-*

*'Apropos payment for milk price difference, the assessee society does not purchase milk from cattle owner as mistakenly held by Id. AO. Since the liability has been fastened under misconception of facts, we hold that this payment also is not liable u/s 194H of the Act. In view thereof, second ground of the assessee with regard to disallowance u/s 40(a)(ia) stands allowed."*

*Similarly, the Hon'ble ITAT vide order dated 4-03-2016 for A.Y. 2006-07 to 2010-11 in para no. 25 held that assessee is not liable for deduction of TDS.*

*I have gone through the order of the ITAT and facts of the case before me. There were no change in the facts of both the year. Thus by respectfully following the order of ITAT, since the assessee is not liable for deductions of tax at source u/s 194H, the disallowance made by the AO u/s 40(a)(ia) is deleted."*

*2.3 During the course of hearing, the Id. DR relied on the order of the AO.*

*2.4 We have heard the rival contentions and perused the materials available on record. It emerges from the records that in the case of the assessee, relief has been granted by the Id. CIT(A) on the basis of the decision of ITAT Coordinate Bench in assessee's own case (supra). Hence, respectfully following the decision of Coordinate Bench in assessee's own case (supra), we dismiss the appeal of the Revenue."*

Accordingly, in view of the consistent view taken by the Tribunal on this issue in assessee's own case we do not find any reasons to interfere with the impugned order of the Id. CIT(A).

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

Order pronounced in the open court on 07/08/2019.

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

दिनांक / Dated:- 07/08/2019.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

**\*Santosh.**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- DCIT, Circle, Sikar.
2. प्रत्यर्थी / The Respondent- M/s Sikar & Jhunjhunu Zila Dugdh Utpadak Sahakari Sangh Ltd., Sikar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1329/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar