

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member]**

I.T.A. No. 1825/Kol/2019
Assessment Year: 2009-10

Hemraj Agarwal.....Appellant
187, Chandni Chowk
Golebazar, Kharagpur
Paschim Medinipur
West Bengal - 721 301
[PAN: AFQPA 4712 G]

Vs.

Deputy Commissioner of Income Tax, Circle-2, Midnapur.....Respondent

Appearances by:

Shri Miraj D. Shah, A/R, appeared on behalf of the assessee.

Shri Jayanta Khanra, JCIT, Sr. D/R, appearing on behalf of the Revenue

Date of concluding the hearing : February 24th, 2020

Date of pronouncing the order : February 26th, 2020

O R D E R

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 11, Kolkata, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 28/06/2019, for the Assessment Year 2009-10.

2. The assessee is an individual and is engaged in the business of wholesale of pulses, M. Seeds etc. The Assessing Officer while passing an order u/s 143(3) of the Act on 16/12/2011, disallowed an amount u/s 40(a)(ia) of the Act, on the ground that the assessee violated the provisions of Section 194C of the Act, with respect to payment to transporters. The assessee carried the matter in appeal. The ld. First Appellate Authority, accepted the contention of the assessee that there is no contractual relationship between the assessee and truck drivers/transporters and hence the provisions of Section 194C of the Act, will not apply. While holding so, the ld. CIT(A) came to the conclusion that Section 194H of the Act, applies as the trucks were obtained on payment of commission. As no TDS u/s 194H of the Act, was made on these commission payments, he confirmed the disallowance u/s 40(a)(ia) of the Act.

3. Aggrieved the assessee is in appeal before me.

4. After hearing rival contentions, I find that the term "commission and brokerage" has been defined in Explanation (i) of Section 194H of the Act. This reads as follows:-

"commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;"

4.1. In this case, the truck drivers or transporters were not acting on behalf of the assessee for services rendered. Thus, it cannot be held that the assessee has paid commission or brokerage as defined in Explanation (i) to Section 194H of the Act. Hence Section 194H of the Act, does not apply. Thus, the disallowance u/s 40(a)(ia) of the Act, is bad in law.

5. Accordingly, Ground No. 2 to 7 are allowed.
6. Ground No. 8 is consequential in nature.
7. Ground No. 9 is dismissed as not pressed.
8. Ground No. 1 and 10 are general in nature.
9. In the result, appeal of the assessee is allowed in part.

Kolkata, the 26th day of February, 2020.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 26.02.2020
{SC SPS}

Copy of the order forwarded to:

1. Hemraj Agarwal
187, Chandni Chowk
Golebazar, Kharagpur
Paschim Medinipur
West Bengal - 721 301

2. Deputy Commissioner of Income Tax, Circle-2, Midnapur

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches