

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. Nos. 01 & 02/PAT/2021
Assessment Years: 2012-2013 & 2013-2014**

***Ravi Lochan Singh,..... Appellant
Pustak Bhandar Compound,
G.M. Road, Patna-800004, Bihar
[PAN:AKIPS4848Q]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-5(1), Patna,
Birchand Patel Marg,
Patna-800001, Bihar***

Appearances by:

*Shri Alok Kumar Shahi, Advocate, appeared on behalf of
the assessee*

*Shri Rupesh Agrawal, Sr. D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : May 09, 2023

Date of pronouncing the order : May 17, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present two appeals are directed at the instance of assessee against the separate orders of ld. Commissioner of Income Tax (Appeals), Patna-2 dated 26.02.2020 passed for Assessment Years 2012-13 and 2013-14.

2. Since the issues are common, therefore, we heard both the appeals together and deem it necessary to dispose of them by this common order.

3. The Registry has pointed out that the appeals are time-barred, but we find that the period mentioned by the Registry is a COVID period because impugned orders of the ld. CIT(Appeals) are dated 26.02.2020, by the time the limitation for filing of appeal expires COVID pandemic struck off in the country and thereafter the assessee has filed the appeals in 2021. Hence, the period is already covered by the decision of the Hon'ble Supreme Court and both the appeals are not to be treated as time-barred.

4. In assessment year 2012-13-

(a) the assessee is impugning disallowance of Rs.3,38,970/-, which was paid as consultancy fees.

(b) Disallowance of Rs.2,40,000/-, which was paid to Ravi Lochan Singh HUF.

(c) The next amount, which has been disallowed by the ld. Assessing Officer, is of Rs.7,31,140/-. This amount has been disallowed to the assessee on the ground that while making commission payment to

Monisha Rao Saraswati, Ankita Saikia and Surya Narayan Mishra, the assessee did not deduct the TDS. The assessee has filed copies of their income tax return and submitted that the recipients have shown these receipts into their income.

All these expenses have been disallowed to the assessee on the ground that he failed to deduct TDS under section 194H of the Income Tax Act. The assessee has submitted that as far as payment of Rs.3,38,970/- is concerned, this payment was made to Dr. Sitasaran Singh, who has already filed his return of income-tax and paid the taxes on the receipts from the assessee. The assessee has annexed copy of the letter and other details.

5. The next payment is of Rs.2,40,000/-, which has been paid to M/s. Ravi Lochan Singh HUF as rent and M/s. Ravi Lochan Singh HUF has also filed its return of income. This rent received from the assessee has been shown as an income.

6. In A.Y. 2013-14, the assessee is impugning disallowance of Rs.6,07,335/- paid to nine agents and disallowance of Rs.4,11,726/-.

7. In assessment year 2013-14, the first payment is of Rs.6,07,335/-. It was paid to nine concerns and claimed

under the head “commission”. This payment has been disallowed to the assessee on the ground that the assessee failed to deduct the TDS under section 194H. Similarly the assessee had incurred advertisement expenses of Rs.4,11,726/-. It was disallowed to the assessee on the ground that it failed to deduct the TDS. These findings of the ld. Assessing Officer for all these five issues have been upheld by the ld. CIT(Appeals).

8. Before us, ld. Counsel for the assessee relied upon the judgment of the Hon’ble Supreme Court in the case of Hindustan Coca Cola –vs.- CIT reported in 293 ITR 226, wherein it has been propounded that in case a recipient has included the receipts from an assessee in its income, then in the hands of the payer, the deduction would not be disallowed under section 40(a)(ia) on the ground that TDS was not deducted. The assessee has filed evidence, copy of the return of Dr. Sitasaran Singh for A.Y. 2012-13 with regard to payment of Rs.3,38,970/-. In A.Y. 2012-13, similarly copy of the return of Ravi Lochan Singh HUF for showing that rental income received from the assessee has been duly recognized in its accounts.

9. Circumstance in the next year is also similar. The recipients have shown these receipts as their income. The ld. Assessing Officer not disputed about the nature of expenses and their incurrence for the purpose of their

business, his only grievance was that the assessee has not deducted the TDS while making the payments. All these payments are covered by the decision of the Hon'ble Supreme Court in the case of Hindustan CocaCola, therefore, we allow the appeals of the assessee in both the years and delete the disallowances.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 17.05.2023.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President

Kolkata, the 17th day of May, 2023

*Copies to :(1) Ravi Lochan Singh,
Pustak Bhandar Compound,
G.M. Road, Patna-800004, Bihar*

*(2) Income Tax Officer,
Ward-5(1), Patna,
Birchand Patel Marg,
Patna-800001, Bihar*

*(3) Commissioner of Income Tax (Appeals),
Patna-2,*

(4) Commissioner of Income Tax- ,

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.