

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.274/Chny/2023**
(निर्धारण वर्ष / Assessment Year: 2018-19)

&

आयकर अपील सं./ **ITA No.275/Chny/2023**
(निर्धारण वर्ष / Assessment Year: 2019-20)

M/s. Greenstar Fertilizers Limited, SPIC House, 7 th floor, 88, Mount Road Guindy, Chennai-600 032.	बनाम / Vs.	ACIT TDS Circle, Madurai
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AADCG-9451-D		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri D. Hema Bhupal(JCIT) –Ld.DR
सुनवाई की तारीख/ Date of Hearing	:	21-06-2023
घोषणा की तारीख / Date of Pronouncement	:	27-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. The grievance of the assessee in captioned appeals for Assessment Years (AY) 2018-19 & 2019-20 is identical i.e., demand raised u/s 201(1) / (1A) for want of tax deduction at source (TDS) on certain payments in terms of Sec. 194H of the Act. These payments are in the nature of rebates given by the assessee to its dealers / distributors. The impugned orders have been passed by learned

Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 09.01.2023 in the matter of separate orders passed by learned Assessing Officer u/s 201(1) / 201(IA) of the Act on 19-02-2020.

2. The Ld. AR, drawing our attention to copies of invoices, credit notes and ledger extracts, submitted that the transactions were carried out on principal-to-principal basis and there was no agency relationship between the assessee and its customers. Therefore, the assessee was not obligated to deduct TDS on the impugned payments. The Ld.AR submitted that rebate was given on sales turnover and it was not in the nature of agency commission. The Ld. Sr. DR, on the other hand, submitted that payments were in the nature of commission only. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. In AY 2018-19, an order was passed u/s. 201(1) / 201(1A) pursuant to TDS inspection carried out in the business premises of the assessee. The assessee is stated to be engaged in manufacturing and selling of fertilizers in India. The assessee sold fertilizers through network of dealers. It transpired that the assessee offered annual rebate to selected dealers upon achieving targets. The same was given in the shape of credit notes and gold coins which aggregated to Rs.451.24 Lacs. The assessee submitted that credit notes were given in order to promote the sales. The Ld. AO held that such credits were in the nature of commission which would require TDS u/s.194H and accordingly, the assessee was deemed to be assessee-in-default. Finally, impugned demands were raised against the assessee u/s 201(1) / (1A).

4. The Ld. CIT(A), after perusal of relevant agreement between the assessee and the dealers, upheld the action of Ld. AO by observing as under: -

1. *The dealer sell fertilizers manufactured by the appellant (principal) and the appellant has the power to terminate the agreement.*
2. *The Distributor/ Dealer has agreed to undertake the trade or sale of Products as per the trade terms communicated to him / her by the principal and at the price fixed by the principal from time to time.*
3. *The Principal will pass on to the Distributor/ Dealer such trade margins, discounts or commissions currently in vogue and as modified periodically by the Principal to the Distributor/ Dealer.*
4. *The Distributor/ Dealer or their authorized agent shall ensure, during the currency of this agreement, to promote the distribution of Product within the prescribed location.*
5. *The Principal shall have and does reserve the rights at all times during the currency of this agreement to appoint other Distributor/ Dealer, Agents or to open marketing points besides effecting distribution directly by themselves by opening and operating their own depots and distribution points or otherwise.*
6. *The Distributor/ Dealer will abide by and follow such instruction and directives that the principal may issue from time to time regarding the procedures to be adopted pertaining to transactions under this Agreement.*
7. *The Distributor/ Dealer shall prepare and submit to the principal every month or at agreed intervals any reports, returns of accounts or statements of sale of Products made by them from time to time as required by the Principal.*
8. *The Distributor/ Dealer shall permit and allow free access to the Principal or their Authorities, Officers and Representatives to inspect storage points, godowns and other premises of the Distributor/ Dealer or their Agents for the purpose of inspection and for ensuring by the Principal that all conditions and statutory obligations pertaining to storage, distribution, marketing and sales etc, are duly complied with. The Distributor/ Dealer shall take remedial steps as pointed out by the Principal in case of any deficiencies are observed.*

5.3 All the above factors indicated that there was principal-agent relationship between the taxpayer and the dealers. The principal-agent relationship was an arrangement in which one entity legally appointed another to act on its behalf. In a principal-agent relationship the agent acts on behalf of the principal and should not have a conflict of interest in carrying out the act and the relationship is expressed clearly through a written contract or is implied through actions. The agent is responsible for completing the task given by the principal so long as the principal provides reasonable instructions. The agent has an obligation to perform the tasks with certain level of skill and care. A duty of loyalty is also implied. Generally, the onus is on the principle to create incentives for the agent to ensure they act as the principal wants. Therefore, the contention of the appellant that the relationship between the appellant company and these dealers is that of principle to principle and not that of principle and agent did not stand to the test of facts and clauses of the dealer agreement.

5.4 Further, it was noted that the appellant appointed dealers to distribute its product in the prescribed geographical areas. The dealer should purchase the

goods from the appellant at a fixed rate (fixed by the appellant) and the appellant offered various incentives and commissions based on their sales performance. The dealer had to sell the product of the appellant at the rate fixed by the appellant and has to adhere to all guidelines as prescribed by the appellant. In normal situation of principal-to-principal relationship one cannot control the other. However, in the case under consideration, though the appellant gave a dealership to the distributor, the activities of the dealer was under full control of the appellant. The business affairs of the dealer were regulated by the appellant in a manner as appellant thought fit. Therefore, the incentives enjoyed by the dealer were to be treated as commission liable for TDS under section 194H of the IT Act.

5.5 The argument of the appellant that the rebates / discount given in the form of cash (credit notes) by the company to dealer will reduce the receivable balance of the dealer and corresponding reduction in the purchase cost of goods for the dealer, will not alter the conditions to deduct tax at source existed even under the mercantile system of accounting where accrual of liability for any expenditure is not dependent on the receipt of invoice from the person to whom the payment for expenditure was made. The appellant had full knowledge of what was due to its dealers and therefore TDS is mandatory. Even if it was not possible at all times to correlate specific amount of TDS with specific payment to dealers, tax should be deducted at source from rebates paid at a fixed percentage. Payments received from dealers are a continuous, indivisible process embedded in the business dynamics of the appellant. The income or loss is the cumulative result of the working carried on by the appellant for a particular year. Therefore, there was no requirement of immediate nexus between payment as such and the TDS made out of a particular payment. Further, where the law used the words 'credit shall be given to TDS on production of certificate for AY for which income is assessable' under section 194H of the act, it was implied that nexus between TDS and corresponding income was rather notional / conceptual.

5.6 TDS is a machinery provision for collecting tax on the potential income of the payees and there is a presumption that tax should invariably be deducted out of income. For the purposes of section 194H the definition of commission or brokerage includes any "payment" where it did not use the expression "income" and tax deduction has to be on the payment. As person responsible for making payment, it was the duty of the appellant to deduct TDS. Further, Section 194H of the ITA also did not use the expression 'chargeable to tax' and hence the taxpayer cannot take a plea that the rebates / trade discounts are paid only when a dealer achieves certain quantum of sales, while the normal buying and selling goes on irrespective of the scheme. In view of the above, it is held that the taxpayer cannot escape from the responsibility of deducting TDS.

The Ld. CIT(A) thus held that there was principal-agent relationship between the taxpayer and the dealers. The principal-agent relationship would be an arrangement in which one entity legally appointed another to act on its behalf. In a principal-agent relationship, the agent acts on behalf of the principal and should not have a conflict of interest in

carrying out the act and the relationship is expressed clearly through a written contract or is implied through actions. The agent is responsible for completing the task given by the principal so long as the principal provides reasonable instructions. The agent has an obligation to perform the tasks. The activities of the distributor were in full control of the assessee. Therefore, the assessee was liable to deduct TDS against impugned payments. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. In our considered opinion, for applicability of TDS obligation u/s 194H, there should exist agency relationship between the payer and the payee. The payee should act as an agent for the assessee. From the fact, it emerges that the assessee sells its products through network of dealers / distributors under a commercial agreement. As per the terms, the risk and rewards of sale transaction pass on to these dealers at the point of time of sale only. The assessee merely regulates business terms for the purpose of sale. Nevertheless, the sale happens on principal-to-principal basis only. The assessee provides rebates to dealers depending on market conditions. Fixed rebates are generally reduced from the invoice and only net sale consideration is shown in the financial statements. Variable rebates are based on sales quantity or on achievement of sales targets. However, the dealers / distributors do not act on behalf of the assessee rather they act on independent basis subject to business terms laid down by the assessee. The risk and reward of goods get transferred at the time of sale by assessee to these dealers. The documents as placed on record substantiate all these facts. The decision of Hon'ble Supreme

Court in the case of **CIT vs. Ahmedabad Stamp Vendors Association (348 ITR 378)** supports the case of the assessee. In this case, Hon'ble Court held that discount given to stamp vendors for purchasing stamps in bulk quantity was in the nature of cash discount in transaction of sale and, therefore, section 194H would have no application to that transaction. Respectfully following the same, we would hold that there was no obligation on assessee to deduct TDS on rebates given on transaction of sale. Accordingly, impugned demand, for both the years, stands deleted.

6. Both the appeals stand allowed in terms of our above order.

Order pronounced on 27th June, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 27-06-2023

DS

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF