

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 753/Asr/2014
Assessment Year: 2012-13

Trans Asian Industries
Exposition (P) Ltd.
H/O: Nishat, Srinagar
(Kashmir) B/O: M-1 Hauz
Khas, New Delhi
[PAN: AAAC T 5881H]
(Appellant)

V. Assessing Officer (TDS),
Circle, Srinagar

(Respondent)

I.T.A. No. 751/Asr/2014
Assessment Year: 2013-14

Income Tax Officer (TDS),
Srinagar

(Appellant)

V. Trans Asian Industries
Exposition (P) Ltd.
H/O: Nishat, Srinagar
(Kashmir) B/O: M-1 Hauz
Khas, New Delhi
[PAN: AAAC T 5881H]
(Respondent)

Appellant by None

Respondent by Sh. Prashant Singh, Sr. DR

Date of Hearing : 20.06.2023
Date of Pronouncement : 07.07.2023

ORDER

Per Dr. M. L. Meena, AM:

Both the appeals have been filed by the assessee and the Revenue against the separate order of the Ld. Commissioner of Income Tax (Appeals), Jammu even dated 30.09.2014 in respect of Assessment Years: 2012-13 & 2013-14.

2. The assessee has raised the following grounds of appeal in ITA No. 753/Asr/2014:

- “1. *The Ld. CIT(A) has erred in law and facts by confirming the action of Ld. Assessing officer for imposing tax on short deduction of tax at source on payment of rent of Rs. 15,00,000/=. The Action is bad in law thus the payment not to be taxed.*
2. *The Ld. CIT(A) has erred in law and facts by confirming the action of Ld. Assessing officer for imposing tax on short deduction of tax at source on payment on Professional Fees of Rs. 14,72,360/= The Action is bad in law thus the payment not to be taxed.*
3. *The Appellant reserves the right to amend, alter, add, any grounds of appeal.”*

3. The Revenue has raised the following grounds of appeal in ITA No. 751/Asr/2014:

- “1. *That the Ld CIT (A) has erred in deleting the liability raised on account of short deduction of tax at source (TDS) and interest thereon in respect of payments made by the assessee on account of Freight, Advertising Charges and Security Guard Expenses which are covered u/s 194C of the I T Act, 1961 by admitting additional evidence without calling for Remand Report from the A.O.*
2. *That the Ld CIT(A) has further erred in deleting the liability raised on account of short deduction of tax at source(TDS) and interest thereon in respect of payments "made by the assessee on account of Commission paid as Guide Charges which is covered u/s 194H of the I.T Act, 1961.*
3. *That the appellant craves for permission to add, delete or amend the Grounds of appeal before or at the time of hearing of appeal.”*
4. None attended for the assessee although the notice of fixing the appeal for hearing has been got served through the ITO, (TDS), Srinagar /Addl. CIT(DR) by way of affixture in the presence of two independent witnesses, on the directions of the Tribunal.
5. These appeals are old appeals of 2014 and have been fixed for hearing on 25.11.2019, 20.06.2022, 26.07.2022, 15.09.2022, 09.11.2022, 22.12.2022, 09.03.2023, 18.05.2023 and 20.06.2023. Considering the facts of the case and the common issue of short deduction of tax at source being involved in both the appeals, it was decided to hear the Id. DR on the merits of the case and disposed off the appeals.

6. First, we take up the assessee appeal in ITA No. 753/Asr/2014 in respect of AY 2012-13.

6.1 In the first ground of appeal, the assessee has challenged the CIT(A) orders in confirming the action of the AO for imposing the tax liability on a short deduction of tax at source on payment or rent of Rs. 15 lacs.

6.2 The appellant was treated as assessee in default for non deduction of tax on rent paid of Rs. 24,58,200/- by the AO and the tax liability created accordingly. As per record, the appellant has stated in his submission that it has paid an amount of Rs. 2,71,78,200/- as rent during the year under consideration and deducted TDS on amount of Rs. 2,47,20,000/- and that rent of Rs 9,58,000/- was paid to Akhshra theater which is exempted from tax. The appellant further stated that the payee has reflected this amount of payment in his books of account and therefore the appellant in view of the case of Hindustan Coca Cola Beverages Vs CIT could not be held as assessee in default for non -deduction.

6.3 Having heard the Ld. DR, facts on record, assessment order, impugned order and the submission of the appellant, we find that the explanation of the appellant has no merit and substance as the Hon'ble

court in “Hindustan Coca Cola Beverages Vs CIT” (Supra) has clearly held that the payer would not be held liable only if he is able to prove that the payee has reflected the amount in his return of Income.

6.4 In the present case, the appellant has not provided the return of income of the payee nor provided any other details to prove that the payee has reflected this amount in his return either before the authorities below or before us, therefore, the judgment in the case of Hindustan Coca Cola Beverages is not applicable to the facts of the appellant’s case. The Ld. CIT (A) has categorically mentioned that the appellant did not produce any non deduction certificate of the payee to substantiate its point of non deducting tax on the ground that payee was exempt from tax. Considering the argument of the appellant that only 10% TDS should be deducted as the PAN of the payee is provided, the Ld. CIT(A) has been justified in directing the AO, in the interest of justice to consider PAN of the deductee while computing the net tax due from the appellant.

6.5 Accordingly, we find no infirmity or error in the impugned order on the issue of holding the appellant as assessee in default for short deduction of Tax (TDS deduction) and to compute the net tax due from the appellant

based on PAN details of the payee. Thus, this ground of assessee is rejected.

7. In the next ground, the assessee has challenged confirmation of short deduction of tax at source on payment of professional fee of Rs.14,72,360/- being bad in law.

7.1 The AO notice that the appellant has not deducted tax of Rs. 14,72,360/- while making payment of legal and profession charges. and created a tax liability of Rs. 3,65,145/-. The appellant on the other hand stated that the AO has not considered his submission and raised wrong demands as the said deduction was not required because the payments made were below ceiling limit prescribed u/s 194 J of the Act. However, the appellant has not provided any evidence in support of its claim, not even the copy of ledger account of the expense head either before the authorities below or before us and therefore, the Ld. CIT(A) was justified in confirming the action of the AO in creating Tax liability for not deducting tax of Rs. 14,72,360/- while making payment of legal and profession charges. Accordingly, we find no adversity in the decision of the LD. CIT (A) and hence, the 2nd ground of the appellant assessee is rejected.

8. Now, we take up the departmental appeal in ITA No. 751/Asr/2014 for AY 2013-14. In the first ground no. 1, the department has objected to the order of the Id. CIT(A) in deleting the liability raised on account of short deduction of tax at source (TDS) and interest thereon in respect of payment made by the assessee on account of freight charges and credit card expenses which are covered u/s 194C of the Income Tax Act by additional evidences without calling for the remand report of the AO.

8.1. It is seen that a demand of Rs 3,77,978/- was raised by the AO on account of short deduction of TDS on freight expenses. The appellant submitted before the Ld. CIT(A) that an amount of Rs. 15,24,103/- was paid as freight during the year which constitutes petty expenses without giving any contractual obligations between the payer and payee. After considering the submission of the assessee, and perusal of ledger account, the CIT(A) found that the amounts paid were petty freight expenses and does not fall within the ambit of section 194C because no payment was above the threshold limit. Accordingly, this ground of appeal was allowed whereby directing the AO to delete the demand of Rs 3,77,978/- on account of non-deduction of tax. We hold that the CIT(A) has passed a speaking order on merits of the case. In view of that matter, we do not see any reason to

interfere in the decision of the CIT(A) on this issue of TDS applicability on petty freight expenses which do not fall within the ambit of section 194C because no payment was above the threshold limit. Thus, the 1st issue of the department is rejected.

9. In the next issue, the department challenged deletion of addition of Rs 34,869/- on account of short deduction of tax on payments covered u/s 194 C for advertising charges.

9.1 The CIT(A) deleted the addition after considering the appellant submission that this amount constitutes advertisement expenses of small amounts without giving any contractual obligations between the payer and payee. He considered the rival arguments and on perusal of ledger account, it is found that the amount paid were small advertisement expenses and does not fall within the ambit of section 194C because no payment was above the threshold limit. Therefore, this ground of appeal is allowed and accordingly direct the AO to delete the liability of Rs 34,869/-.

9.2 In view of that matter, we do not infirmity in the decision of the CIT(A) on this issue of TDS applicability on petty freight expenses which do not fall within the ambit of section 194C because no payment was above the threshold limit. Thus, the 2nd issue of the department is rejected.

10. The third item relates to short deduction of tax on payments covered u/s 194 C for security guard expenses, thereby raising demand Rs 4,18,169/-. The appellant submitted that this amount constitutes security staff salary expenses paid mostly in cash. These payments were made to the individual employees engaged in security of the business premises of the appellant. The salaries paid to these persons do not exceed the taxable limit and accordingly tax was not deducted. We have

10.1 We have considered the arguments of the Ld. DR and the impugned order. From perusal of ledger account, we find that the cash salaries were paid to individual employees as salary and does not fall within the ambit of section 194C. Further, the salaries paid are less than the taxable limit for deduction of tax u/s 192 of the Act. Therefore, this issue of appeal is rightly allowed by the Ld. CIT by directing the AO to delete the liability of Rs 4,18,169/-. As such, no interference is called for.

11. In ground no. 2, the department has objected to the deletion of tax liability raised on account of short deduction of tax at source(TDS) and interest thereon in respect of payment made by the assessee on account of commission paid to his guide charges which is covered u/s 194H of the Income Tax Act, 1961.

11.1 The AO has stated that the appellant has not deducted tax on payment of Rs. 80,12,509/- which exceeds Rs 5,000/- per person on account of commission. Thus, the AO hold the appellant in default for non-deduction of tax at source/short deduction of tax u/s 194 H of the I.T. Act, 1961.

11.2 In appeal the Ld. CIT(A) deleted the addition by observing as under:

“The appellant submitted that the AO has completely erred in his findings that the commission has been paid. In order to determine the nature of payment it is essential to consider the nature of business of the appellant and the manner in which it operates. The appellant is in the business of dealing in Kashmiri handicraft items like shawl, carpets, paper Machine. His sales are mainly dependant on foreign tourists visiting their showrooms in groups. The business of the appellant mainly supported by tour operators of national and international repute. The tour operators send the tourist groups to the showroom of the appellant but in turn require guide charges are to be borne by the appellant. This arrangement lessens their burden of expenditure and gives opportunity to the appellant for business. The travel agency shares the tours schedule of the tourist groups with the appellant who appoints an approved guide for guiding the conducted tour and communication through translation at various places of tourist importance including monuments, markets, hotels etc. When the tourists groups arrives the appointed guides of the group sponsored by the appellant reach to the hotel to take them to various places. In the process of their visit the tourists group may visit the showroom of the appellant on advice of the guides, however, guides cannot act as an agent and it is not mandatory for the group to buy something compulsorily from the appellant showroom. The group may or may not purchase anything for want of quality, price etc but guide takes his remuneration

irrespective of the occurrence of sale. The guide provides a remote opportunity of business but that may or may not fructify. Nevertheless, the appellant in search of opportunity of business has to incur and pay expense of guide charges which may not translate into sale. Therefore the guide charges are not directly connected to business but definitely incidental to the business. In other words guides are just the catalyst for the business opportunity because the tourists develop one to one relation with them during their stay and interaction with them and if the guide drop any reference of the appellant showroom it carries some weight in the minds of the tourists of the group because of faith develop in the guide. The guide charges are not directly related to the sales effected which is evident from the following chart.

Assessment Year	2011-12	2012-13	2013-14
Sales turnover (Cr.)	29.77	27.94	31.66
Guide Charges (Cr.)	0.57	3.75	2.67

But this is definitely one of the important inputs in the business of the appellant. For the assessment year 2007-08 in the regular assessment u/s 143(3) certain additions were made on account of cash payments as guide charges. The appellate Commissioner has held that the nature of the appellant's business was subjected to fringe benefit tax and accounts are audited. The nature of expenses are such that the cash payments are inevitable. The guide and taxi wala do not accept cheque for small amounts due to them and nor they are expected to provide printed bills to the appellant. The payments to guide have been acknowledged in the previous assessment and appellate orders.

After considering the rival arguments, I find that the payment does not fall under the head commission because there is no principle agent relationship. The guides are numerous and no one knows who will be appointed at that particular

point of time when tourist arrives. This depends on availability of the guides and translators on that particular moment. It is also not a permanent arrangement with a particular guide which can fall within the mischief of said section. The payments are day to day payments of small amounts which is well known and acceptable in this line of business. I have gone through the cases quoted by the appellant also. After considering above, I find that the charges paid for attracting business is incidental to the business and cannot be directly linked to the sales. When it is not linked to the sales terming it as the commission is not proper. I therefore find that the AO has erred in holding the appellant in default. I therefore delete the tax imposed for non deduction of tax on this head. This ground of appeal is allowed and it is directed to delete the demand of Rs.29,80,693/- u/s 194H of the Act.”

11.3 Having heard the Ld. DR, perusal of material on record and the impugned order, we find that the payment does not fall under the head commission because there is no principle agent relationship established by the department. There are numerous guides and no one knows who will be appointed at that particular point of time when tourist arrives as it depends on availability of the guides and translators on that particular moment. It is also not a permanent arrangement with a particular guide which can fall within the mischief of said section. Further, the payments are made on day to day basis of small amounts which is a well-known and acceptable fact in this line of business. The Ld. CIT(A) has considered the facts and citations to arrive at the decision that the charges paid for attracting business is

incidental to the business and cannot be directly linked to the sales. When it is not linked to the sales, treating it as the commission is not proper. In our view, the CIT(A) was justified in deleting the addition made by AO by holding the appellant in default. We, therefore, find no error or perversity in the impugned order to the facts on record in deleting the tax demand of Rs.29,80,693/- u/s 194H of the Act. Thus, this ground of department is rejected.

12. In the result, both the appeals filed by the assessee and the revenue are dismissed.

Order pronounced in the open court on 07.07.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order