

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.1917 to 1923/Del/2023  
(ASSESSMENT YEAR : 2013-14, 2015-16, 2016-17,  
2017-18, 2018-19, 2019-20 & 2020-21)**

**JCIT (OSD)  
Circle – 74(1)  
New Delhi**

**Vs.**

**Dabur India Limited  
8/3, Asaf Ali Road,  
New Delhi-110002  
PAN No.AAACD0474C**

**(APPELLANT)**

**(RESPONDENT)**

**REVENUE BY : Shri Vivek Kumar Upadhyay, Sr DR**

**ASSESSEE BY : Shri M.P. Rastogi, Advocate**

**Date of Hearing : 18.10.2023**

**Date of Order : 18.10.2023**

**ORDER**

**PER BENCH :**

ITA No.1917 to 1923 are seven appeals by the revenue preferred against seven separate orders dated 29.03.2023 by NFAC, Delhi pertaining to the order by the AO framed u/s. 201(1) and 201(1A) of the Act for A.Y. 2013-14, 2015-16 to A.Y. 2020-21.

2. Since common grievance is involved in the captioned appeals all these appeals were heard together and are disposed of by this common order for the sake of grievance and brevity.

3. The first common grievance relates to setting aside the issue of TDS u/s. 194H of the Act on free samples given by the assessee to its stockists/ distributors.

4. The underlying facts in the issue are that in the course of its business the assessee has offered additional/ new products with purchase of the stipulated price to the end-users. Such schemes are implemented through the stockists/ dealers to whom the goods are sold from principal to principal basis.

5. On such free samples of the products the revenue was of the opinion that the incentive of such free samples amounts to brokerage/ commission paid to the distributors and, therefore, liable for TDS u/s. 194H of the Act. The strong support was drawn from the CBDT Circular No.5/2012 dated 01.08.2012 which interalia provides that the expenditure incurred by pharmaceutical companies by providing freebies to medical practitioners and their associations in violation of the IMC regulations will be inadmissible under Section 37(1) of the Act being expenses prohibited by law. Drawing support from this circular the AO held that the items offered to the parties by the assessee to lure the parties to sell

attracts provisions u/s. 194H of the Act and since the assessee failed to deduct the tax on such free samples the AO treated the assessee as “assessee in default”.

6. Representatives of both the sides were heard at length. Case records carefully perused. The provision of section 194H of the Act read as under :-

***“Commission or brokerage***

*194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent:*

***Provided*** that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees:

***Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:*

***Provided also** that no deduction shall be made under this section on any commission or brokerage payable by Bhar Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited their public call office franchisees.*

*Explanation. For the purposes of this section,-*

- (i) commission or brokerage" includes any payment received 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 valuable article or thing, not being securities;*
- (ii) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the*

*profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;*

*(iii) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);*

*(iv) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."*

7. A perusal of the aforementioned provision show that the rendering of services by the recipient to the payer is sine qua non. On facts of the case in hand the sales of goods made by the assessee to its stockists/ dealers on principal to principal basis and no services are rendered by the dealers/ stockists. Free samples of the goods were given by the assessee as additional items to the purchaser during the course of its sales and are in the nature of trade incentive. Free samples of the products distributed among the public at large were given on account of commercial expediency as product campaign. Such public at large has not rendered

any services to the assessee for which the free samples of the goods have been given.

8. We find that the CIT(A) has agreed with the contention of the assessee and thereafter directed the AO to verify whether the transactions are on principal to principal basis from the signed copies of the agreement. We do not find any error or infirmity in such directions of the CIT(A). This common grievance in the captioned appeals is dismissed.

9. The second common grievance is in the appeals bearing ITA No.1918/Del/2023 to 1923/Del/2023 and the same relates to the directions to the AO to provide relief in respect of addition made u/s. 194C, H and J of the Act for non deduction of TDS on certain contractual payment, commission payment and professional fee payment.

10. The quarrel relating to the non deduction of TDS arose from the audit report wherein it has been stated that the assessee has made certain payments without deducting tax at source u/s.194C, H and J of the Act on violation of the relevant provisions the AO treated the assessee as “assessee in default”.

11. When the matter was agitated before the CIT(A) it was strongly contended that the recipient have offered such income in their respective return of income.

12. Considering the submissions of the assessee and drawn support from the decision of the Hon'ble Supreme Court in the case of **Hindustan Coca Cola Beverages in Appeal No.3765 of 2007** the CIT(A) directed the AO to give necessary relief after verification of the certificate to be filed by the assessee showing that the recipient have shown the respective recipients in their return of income.

13. While giving such directions the CIT(A) held that assessee is liable to pay interest u/s. 201(1A) of the Act.

14. Since directions of the CIT(A) are in line with the decision of the Hon'ble Supreme Court (supra). We do not find any reason to interfere with the directions of the CIT(A) this common grievance in all the appeals is dismissed.

15. In the result, the appeals of the revenue are dismissed.

16. Decision announced in the open court on 18.10.2023.

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Dated October, 2023**  
**Neha, Sr. PS**