

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 226/Rjt/2022  
Assessment Year 2014-15**

Dy. Commissioner of Income Tax, Circle-TDS, Rajkot  (Appellant)	Vs	M/s. Apricot Foods Pvt. Ltd., Plot No. 2410 GIDC Lodhika Allmighty Road Nr. Jagdish Exports, Metoda, Dist Rajkot  PAN: AAECA7560Q (Respondent)
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**Revenue Represented: Shri Ashish Kumar Pandey, Sr.D.R.  
Assessee Represented: Shri D.M. Rindani, &  
Ms. Devina Patel, A.Rs.**

Date of hearing : 25-09-2023  
Date of pronouncement : 10-11-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 19.05.2022 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the assessment order passed under section 201(1) & 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The brief facts of the case is that the assessee is a private limited company engaged in the business of processing, preservation, packaging and manufacturing of Namkeens and Chips. On examination of the material collected during the course of spot verification and the details filed in response to the queries raised, the Assessing Officer noticed that the assessee had debited an amount of Rs. 19,64,52,986/- towards purchase of packing materials from six parties. On further verification, the above parties had done job work for printing and packing materials, according to the specification given by the assessee. Thus according to A.O. the above transactions made with the six parties were in the nature of “works contract” within the meaning of Section 194C of the Act and the assessee failed to Deduct Tax at Source (TDS). Therefore the Assessing Officer passed an order u/s. 201(1) of the Act treating the assessee in default for non-TDS an amount of Rs. 46,68,151/-. Further the A.O. noticed that the assessee company provides various types of discounts such as trade discount/quantity discount expiry discount, scheme discount etc to its dealers amounting to Rs. 39,36,687/- to twelve parties. These discounts were offered by way of credit notes and not a direct discount on sale price, but the same is being given for enhancing sale in a particular area or achieving targets for sale. However the A.O. treated the above discount as that of a commission and assessee failed to make TDS u/s. 194H of the Act and made addition of Rs. 3,93,669/-. Similarly, the Assessing Officer levied interest u/s. 201(1) and 201(1A) of Rs. 18,22,225/-.

3. Aggrieved against the same, the assessee filed appeal before Ld. Commissioner of Income Tax (Appeals). The Ld. CIT(A) following Jurisdictional High Court judgment in the case of CIT Vs. Girnar Food deleted the additions made u/s. 201(1) by observing as follows:

**“...6.3 On perusal, I find that the Jurisdictional High Court of Gujarat in the case of CIT vs. Girnar Food 306 ITR 23 (2008) has held that where there is a contract for supply of materials with design/logo/brand printed on such material as per specifications of the assessee, it is a case of sale and not a works contract and therefore TDS was not attracted. The relevant para of the order is reproduced as under:-**

*"3. As can be seen from the impugned order of the Tribunal, the facts are not in dispute. The assessee placed order for supply of printed materials, but the stand of the Revenue is that as the printing was carried out by the supplier as per specifications of the assessee the arrangement would amount to "works contract". The case of the assessee is that it had entered into a contract of purchase/supply simpliciter and the entire product is supplied as such that the suppliers are not exclusively supplying such goods to the assessee, that the assessee does not give any printing contract and there is outright purchase, either by oral or written orders.*

*4. The Tribunal while passing the impugned order has placed reliance on the CBDT Circular no. 715, wherein it is stated by the Board that in a case of sale no deduction under section 194C of the Act is required.*

*5. On going through all the three circulars it is apparent that where the contract is for supply of materials, viz., sale of materials, it cannot be termed to be a contract for work and labour and is not amenable to the provisions of section 194C of the Act*

*6. In the circumstances, the Tribunal having based its decision on the explanatory circular issued by the CBDT, there is no infirmity in the impugned order of the Tribunal. In the absence of any substantial question of law the appeals are dismissed*

*6.3.1 I also find that the facts narrated in above decision are similar with the facts of appellant's case because the entire material of flexi packaging had been purchased by the said 6 parties on their own as independent producers of packing material and also said packing material constitutes a purchase under State VAT law. Thus, it is a case of "Sale" of items/products by suppliers wherein the title of goods was transferred by them to appellant and delivery of printed material is given after they were*

*made and not before. All the said parties who supplied such readymade packing material had paid Excise duty on the same as also VAT on independent production of a finished products carried out. In support of its claim, the appellant has also submitted sample bills from each of the parties, wherefrom the aforesaid fact can be verified that the invoices contain description of goods and there was no payment of labour job charges by appellant. It clearly shows that what was purchased, are the entire flexible laminated packaging material. It is also held by Hon'ble courts that the particulars printed on the said flexible packaging as per specifications or containing appellant's name or particulars of the products thereon does not signify that a jobwork was ordered. Thus, section 194C is not applicable on the purchase made by the appellant.*

*6.3.2 Further, the Girnar case (supra) decision has also taken into account of all Board Circulars including Circular no. 715 relied by the AO and has laid down that no TDS was deductible despite the said Circular.*

*6.4 I further find that the Jurisdictional High Court of Gujarat in the case of Hindustan Lever Ltd. 306 ITR 25 has dismissed the appeal of the Revenue, relying on the basis of own decision in the case of CIT vs. Girnar Food 306 ITR 23 (2008) and held that "where contract is for supply of materials, viz., sale of materials, it cannot be termed to be a contract for work and labour and is not amenable to provisions of section 194C."*

*6.5 In view of the discussions in the preceding paragraphs and judicial pronouncement of the Hon'ble Jurisdictional High Court of Gujarat, the claim of the assessee is found to be correct. Therefore, the AO is directed to delete the TDS default u/s 201(1) r.w.s. 194C of the Act amounting to Rs.46,68,151/-. Thus, ground of appeal no. 1 is allowed."*

4. Similarly on the various discounts offered by the assessee treated as commission amount and assessee failed to make TDS u/s. 194H of the Act. The Ld. CIT(A) deleted the same following Jurisdictional High Court Judgment in the case of M/s. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. by observing as follows:

*"...7.3 On perusal, I find that the Jurisdictional High Court of Gujarat in the case of M/s. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. [2009] 184 DTR 0084 (Guj), [2009] 311 CTR 0556 (Guj), [2019] 416 ITR 0144 (Guj) has held that Whether where in terms of tripartite agreement, assessee sold goods at discounted price to dealers who, in turn, sold those goods to final consumers collected sale consideration from them and handed it over to assesses since it was a transaction on principal to principal basis and, there was no service rendered by dealers to assessee,*

*discount offered to dealers could not be regarded as commission requiring deduction of tax at source under section 194H-Held, yes [Para 14] in favour of assessee. The relevant para of the order is reproduced as under-*

*"14 On a perusal of the aforesaid provision of section 194H, it is clear that any person, not being an individual or Hindu undivided family, who is responsible for paying by way of commission 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 whichever is earlier, is liable to deduct tax. Explanation (1) to section 194H defines "Commission or Brokerage which 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 and selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities. On the facts of the present case, as per the tripartite agreement entered into between the assessee and the dealer, there is no service provided by the dealer to the assessee in the course of buying or selling goods, inasmuch as, the assessee directly sells goods to the dealer and the dealer makes the payment after collecting it from the consumers and, therefore, it is a transaction on principal to principal basis and, therefore, the payment made by the dealer is not liable for any deduction of tax by the assessee company Therefore, in the facts of the case, the provisions of section 40(a)(ia) of the Act cannot be applied as the dealer cannot be said to be a commission agent of the assessee company"*

*7.3.1 I also find that the facts narrated in above decision are similar with the facts of appellant's case because the discounts was allowed by appellant to its own buyers/parties to whom sold goods (who purchased goods from the appellant). Further, none of the parties were appellant's agents and none of them had rendered any services to appellant. For buying goods from the appellant, they had paid sales consideration. They had also not sold the goods supplied to them on behalf of appellant but they had sold the same in their own rights as independent parties.*

*7.4 I further find that the Hon'ble Andhra Pradesh and Telangana High Court in the case of Commissioner of Income-tax (TDS) v. United Breweries Ltd. [2017] 80 taxmann.com 123 (Andhra Pradesh and Telangana) has held that "there being no relationship of a principal and agent between assessee and retailers, trade incentives paid by assessee to retailers through del-credere agents in order to boost its sale could not be treated as commission for purpose of section 194H [In favour of assessee]".*

*7.5 In view of the discussions in the preceding paragraphs, the claim of the appellant is found to be correct. Therefore, the AO is directed to delete the TDS default u/s 201(1) r.w.s. 194H of the Act amounting to Rs.3,93,669/-. Thus, ground of appeal no. 2 is allowed."*

5. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

*1. The Ld. CIT(A) has erred in law as well on facts of the case in holding that assessee is not deduct Tax at source u/s 194C of the IT Act, 1961, on payment of Rs. 46,68,151/- made by to purchaser, regarding packing material from 6 parties, by treating such payments as not be in the nature of contract.*

*2. The Ld. CIT(A) has erred in law as well on facts of the case in holding that the assessee is not to deduct Tax at source u/s 194H of the IT Act, 1961, on payment (discount) of Rs.3,93.669/- made by the assessee to 12 parties, given as incentives for achieving sales targets & enhancing sales, by treating such payments as not be in the nature of commission.*

*3. The Ld. CIT(A) has erred in law as well as on fact in deleting the interest charged u/s 201(1A) on the default TDS amount of Rs. 46,68,151/- (194C) & of Rs. 3.93.669/- (194H), since the above mentioned TDS defaults were deleted by the Hon'ble CIT(A).*

*4. It is, therefore, prayed that the order of Ld. CIT(A) may be cancelled and that of the Assessing Officer may be restored to the above fact.*

6. Heard rival submissions and perused the materials available on record including the Paper Book filed by the assessee. The assessee made purchase of the printed packing materials from six parties as mentioned in the assessment order. It is not a case of the Revenue that assessee's own material given to the suppliers for getting any particular work or a job or printing done from them. Further there is no agreement between the assessee and suppliers of goods as being in the nature of job work. Thus it is not a works contract, but it is an outright purchase which is not hit by Section 194C of the Act. The entire material of flexi packaging were purchased by the suppliers on their own and paid Excise Duty and VAT. The assessee submitted sample bills from each of the suppliers, wherein the above facts are proved which is not disputed by the Assessing Officer. Further the above issue was considered by

Jurisdictional High Court in the case of Girnar Food (cited supra) and clearly held that it is a case of sale and not “works contract” and section 194C will not be applicable. Respectfully following the above decision, Ground No. 1 raised by the Revenue is devoid of merits and the same is hereby dismissed.

7. Regarding Ground No. 2 namely various discounts given by the assessee is to be treated in the nature of commission, Section 194H applicable. The word 'commission or brokerage' is defined in section 194H so as to include 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. Thus, plain reading of the definition of section 194H makes it clear that the said section applies only if the nature of the payment is for acting on behalf of another person or for rendering of services. However, in the case of the assessee, the discounts were allowed to assessee's own buyers/parties to whom goods are sold. Further, none of the parties were assessee's agents and none of them had rendered any services to the assessee. For buying goods from the assessee, they paid sales consideration. They had also not sold the goods supplied to them on behalf of assessee, but they had sold the same in their own rights as independent parties. Thus, all the 12 parties were not the agents and had not rendered any services to the assessee, therefore section 194H does not apply in the present case.

7.1. It is further seen that the credit notes for the discounts allowed to parties are for following purposes-

- (a) Goods returned to the assessee and hence reduction in sale price was granted.
- (b) Reduction in sale price on account of shortage and special discount as per the working and claims annexed to the credit notes.
- (c) Credit granted towards amount of octroi paid by the buyer and to be borne by the assessee, hence credit allowed to them.
- (d) Discount allowed to the buyers for achieving target sales in respect of goods purchased by them from the assessee.

7.2. It is seen that all the credit notes are by way of sales price difference allowed to said parties for specific reasons as stated therein. The said credit notes therefore rightly would reduce the gross sale consideration charged at the time of raising the original invoices and supplying of the goods to them. All the said 12 parties were the buyers/customers of the assessee. Therefore, the provision of section 194H would not apply in the above transaction. The said issue is squarely covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court of Gujarat having identical facts in the case of M/s. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. [2019] 416 ITR 0144 (Guj). Thus we do not find any merits in the ground no. 2 raised by the Revenue and the same is hereby rejected.

8. Ground No. 3 namely charging of interest u/s. 201(1A) of the Act which is consequential of non-deduction of TDS. Since Ground

Nos. 1 & 2 are already held against the Revenue, this ground no. 3 is also hereby dismissed.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 10 -11-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 10/11/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट