

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2130/DEL/2023
Assessment Year: 2014-15**

DCIT, Circle-74(1), New Delhi.	<u>Vs</u>	Dabur India Limited, 8/3, Darya Ganj. New Delhi-110002 PAN- AAACD0474C
APPELLANT		RESPONDENT
Assessee represented by	Sh. M.P. Rastogi, Adv.	
Department represented by	Sh. Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	22.11.2023	
Date of pronouncement	23.11.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, preferred by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 29.03.2023, pertaining to the assessment year 2014-15. The Revenue has raised following grounds of appeal:

“(1) Whether in the facts and circumstances of the case and in law, in the absence of power of setting aside a case to Assessing Officer (AO), Ld.

CIT(A) has erred in setting aside the issue of TDS u/s 194H of the Income-tax Act, 1961 on free samples given by the assessee to its stockists/distributors to the file of AO to examine and verify the signed copy of agreements to find if relationship between the assessee and stockiest/distributor is on a principal to principal basis?

ii) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the arrangement between the assessee and its stockist/distributors was on principal-to-principal on the basis of the sample copy of the agreement ignoring the fact that the assessee has been unable to provide signed copies of these agreements during any of the proceedings?

(iii) Whether in the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding the arrangement between the assessee and its stockists/distributors was on principal-to-principal basis and not appreciating the fact that the free samples given by the assessee is a form of incentive and commission to stockists/distributors which will be liable to TDS u/s 194H of the Income-tax Act, 1961.

(iv) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not holding that the offering of free samples by the assessee in the course of its business to stockists/distributors is in nature of incentive and commission and will be liable to TDS u/s 194H of the Income-tax Act, 1961?

v) The appellant craves leave to add, alter or amend any of the Grounds of appeal at the time of hearing.

2. Facts, giving rise to the present appeal, are that the assessee is a company, engaged in the business of Ayurvedic medicines and natural consumer products etc. A survey action u/s 133(2A) of the Income-tax Act, 1961(hereinafter referred to as the "Act") was carried out by the Department. The AO noticed that the assessee was required to deduct tax. The assessee was show caused for non-deduction of tax. Thereafter the AO framed assessment raising demand for non-

deduction of tax u/s 201(1) and interest thereon u/s 201(1A) of the Act. Aggrieved by this the assessee preferred appeal before the learned CIT(A), who after considering the submissions partly allowed the appeal of the assessee, inter alia, observing as under:

“7.9 With these observations, and on the basis of sample copy of agreement and its clauses it seems that the arrangement between the assessee and the distributor was that of principal-to-principal and not of principal-agent as key elements for having principle - Agent basis are missing in present appeal. Prima facie, it seems that provision of section 194H is not applicable in the case of appellant. Since, neither appellant nor AO have provided any signed copy of agreement between the appellant company and stockists/distributors, the appellant is directed to supply a signed copy of agreements with all different stockists to the AO. The AO is also directed to verify the clauses of agreement in light of above facts and provide necessary relief to the appellant if the relationship of the appellant and stockist/distributor established as principal to principal basis as discussed supra. With this, the grounds No 1 to 4 and 6 are partly allowed.”

Aggrieved against this, the Revenue is in appeal before this Tribunal.

3. At the outset, learned counsel for the assessee pointed out that the issue is covered by the decision of the Coordinate Bench in assessee's own case for A.Y. 2013-14, 2014-15, 2015-16, 2017-18, 2018-19, 2019-20 & 2020-21. He submitted that the facts are identical.

4. On the other hand, learned DR fairly conceded that the issues have been decided against the Revenue. However, he supported the assessment order.

5. We have heard rival submissions and perused the material available on record. We find that This Tribunal in assessee's own case for A.Y. 2013-14 to 2020-21 rendered in ITA nos. 1917 to 1923/Del/2023 (order dated 18.10.2023), was pleased to decide the issue in favour of the assessee, inter alia, by observing as under:

“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.”

5.1 In respect of other grievances the Tribunal has decided as under:

“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.”

5.2 Admittedly the facts are identical for the assessment year under consideration. No binding precedent to the contrary has been brought to our notice. Therefore, taking a consistent view we do not see any infirmity in the order of learned CIT(A) and the same is hereby affirmed. Grounds raised by the Revenue are dismissed. Consequently, appeal of the Revenue is dismissed.

pronounced in open court on 23.11.2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
MP

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI