

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA**

Before Sanjay Garg, Judicial Member
and
Shri Girish Agrawal, Accountant Member

**I.T.A. Nos. 72 to 98/Pat/2024
Assessment Year : 2014-15
&
I.T.A. Nos. 99 to 126/Pat/2024
Assessment Year : 2015-16
&
I.T.A. Nos. 127 to 135/Pat/2024
Assessment Year : 2016-17**

Bihar State Food & Civil Supplies Corporation Limited Darbhanga PAN: AACCB 0679 F	vs	ITO, Ward-2(1), Patna
Appellant		Respondent

Date of Hearing	19.03.2024
Date of Pronouncement	29.04.2024
For the Assessee	Shri Ravi Shankar, Advocate
For the Revenue	Shri Sushil Kumar Mishra, JCIT, DR

ORDER

Per Bench:

The present appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter referred to as 'CIT'] evenly dated 14.10.2022, passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') against order u/s 201(1)/(1A) of the Act holding the assessee as assessee in default towards non-deduction of tax at source.

2. Registry has informed that the instant appeals i.e. ITA Nos. 99 to 126/Pat/2024 (AYs. 2015-16) are time barred by 329 days and

ITA Nos. 127 to 135/Pat/2024 (AYs. 2016-17) are time barred by 320 days. During the course of hearing, it has been contended that the concerned person who was looking after the affairs of income-tax, committed a mistake by not approaching the authorised representative for filing the appeals. He also submitted that the assessee being State of Bihar owned Corporation, various approvals were needed. Admittedly, the delay has occurred but the assessee could not have benefitted by filing the appeal beyond the prescribed time limit. He further prayed that it was a bona fide mistake and in the larger interest of justice, the delay may be condoned. Though the revenue authorities have opposed to the said request, we on going through the reasons mentioned during the course of hearing and in the larger interest of justice, condone the delay and admit the appeal for adjudication.

3. Before us, the order of Hon'ble Jurisdictional High Court dated 09.11.2023 has been placed and from perusal of the same, we observe that the Hon'ble Court while adjudicating the Civil Writ Jurisdiction Case No. 3531 of 2023 and 4212 of 2023, directed this Tribunal to dispose of the appeal expeditiously or consider the interim orders sought for by the assessee, if the appeal cannot be disposed of within a time frame. Thus, considering the direction of Hon'ble Jurisdictional High Court, we are disposing of the present appeals.

4. Since the facts and issues involved are identical in the bunch of captioned appeals, these are taken for disposal by this common order. For the sake of convenience, ITA No.72/Pat/2024 for AY 2014-15 is taken as lead case and our decision shall apply *mutatis*

mutandis to all the remaining appeals, captioned above. The assessee in this appeal has taken the following grounds of appeal:

“1. Whether the ld. CIT, NFAC, Delhi was justified on the facts and in circumstances of the case and in law to confirm the addition u/s 201(1)(1A) of the Income-tax, Act, 1961 made by the assessing officer on account of non deduction of TDS u/s 194H.

2. Whether the ld. CIT, NFAC, Delhi was justified on the facts and circumstances of the case and in law to confirm the addition u/s 201(1)(1A) of the Income tax, 1961 amounting to Rs. 14,59,071/- in total made by the assessing officer on account of assessee in default u/s u/s 201(1)(1A) during the FY 2013-14 relevant to AY 2014-15 while passing the ex-parte assessment order u/s 201(1)(1A) of the Income tax Act, 1961 on 16.02.2018?

3. Whether the ld. CIT, NFAC, Delhi was justified on the facts and in circumstances of the case and in law to confirm the addition u/s 201(1)(1A) of the Income tax, 1961 amounting to Rs. 14,59,071/- in total made by the assessing officer on account of assessee in default u/s 201(1)(1A) during FY 2013-14 relevant to AY 2014-15 by dismissing the appeal of the assessee merely on the ground of non-compliance of notices u/s 250 of the Income tax Act, 1961 rather than deciding the appeal on merit on questions of facts and law based on information available on record?

4. For that the ld. CIT, NFAC, Delhi has erred in passing a vague and cryptic order.

5. For that the whole order is bad in fact and the law of the case and is fit to be quashed.

6. The appellant craves leave to add to alter, amend, modify and for delete any or all of the above said grounds of appeal. The appellant reserves its right to file rather submission in the appeal.”

5. Brief facts of the case are that assessee is fully owned by State Government of Bihar and is engaged in dealing in agricultural produce, functioning under the direct control and supervisions of the Ministry of Agriculture in the Central Government. The primary Agricultural Co-operative Societies at the district and villages level are members of the assessee corporation. The Government of India

through the Ministry of Agriculture in order to protect the interest of farmers, before the beginning of each agriculture season announces the Minimum Support Prices (MSP) for the crops like wheat/paddy. The PACS purchase agricultural produce from the farmers on behalf of BSFC. In order to procure the food grain from farmers, PACS raise bills on BSFC and in the invoices raised, “commission” or “service charge” is charged. The revenue authorities examined the transaction carried out by the assessee during F.Y. 2013-14 and on going through the record, observed that for the purpose of procurement of food grains, the assessee corporation paid commission to PACS and the same is liable for deduction of tax at source u/s 194H of the Act. Since, no such tax was deducted by the assessee (deductor) on the payment of commission to deductees i.e. PACS, the ld. AO came to a conclusion that the assessee is in default for non-deduction of tax at source on commission u/s 194H of the Act. Further, ld. AO noticed that no details were filed about the Permanent Accountant Number of the PACS which left him with no option but to hold the assessee liable to non-deduction of tax at source @ 20% of the commission charges.

5.1. An order u/s 201/201(1A) r.w.s. 194H of the Act was passed on 16.02.2018 for F.Y. 2013-14 relevant to AY 2014.15 holding the assessee as assessee in default and raising a demand of Rs. 14,59,071/- for non-deduction of TDS (interest included) on commission of Rs. 49,60,827/-. During the course of assessment proceedings, no submissions were filed by the assessee. Subsequently, assessee preferred an appeal before the ld. CIT(A)

but again failed to succeed as it could not appear on various dates of hearing most of which fell during the Covid-19 pandemic period.

6. Aggrieved, assessee is in appeal before this Tribunal. Ld. Counsel for the assessee vehemently argued by referring to detailed paper book and judicial pronouncements which includes decision of co-ordinate bench, Bangalore in *ITA No. 721 to 723/Bangalore/Others in the case of NAFED vs DCIT dated 08.03.2013*. He stated that the transaction between the assessee and PACS is on principal to principal basis and not in the nature of principle-agent relationship. Commission paid to PACS is in the nature of profit mark up.

7. Per contra, ld. departmental representative vehemently argued supporting the orders of the authorities below.

8. We have heard the rival contentions and perused the material placed before us. The question before us is whether ld. CIT(A) is justified in confirming the action of ld. AO raising demand for non-deduction of tax at source u/s 194H of the Act on the alleged commission paid to Primary Agriculture Co-operative Society (PACS).

9. We note that the State Government in order to make purchase from the farmers at the minimum support price (MSP) issued certain guidelines and the same are mentioned in the letter dated 07.12.2011 vide letter no. 9624 by the Development Commission of Bihar. The copies of the same are placed in the paper book on record. In para 12 of the said guidelines, there is a discussion about the role of Primary Agriculture Co-operative Society.

10. Under these guidelines, it is stated that the State Government through its nodal agencies and the state owned corporation shall first select the PACS working at various district and village levels. Various Officers in charge of the PACS should be fastened with the duties and responsibilities, to ensure proper running of the PACS and to get the details of purchase and sale of wheat/paddy of the foodgrains on day to day basis, to provide financial assistance to PACS through co-operative banks, to provide credit limits to the PACS to appoint various officers at district levels to examine the working of PACS, to organise training programme for President/Managers of PACS regarding procurement of food grains and carrying out of business activities etc. and also to provide facility for warehousing of the food grains. As per the above referred guidelines dated 07.12.2011, we observe that specific mechanism has been provided for the working of PACS. In the very same guidelines MSPs have been fixed for wheat/paddy of food grains per quintal.

10.1. For carrying out all these activities, PACS were given commission @ 2.05% of MSP for procurement by PACS in the kharif marketing seasons and 2% of MSP on procurement of wheat in the rabi marketing season. However, on subsequent dates i.e. 26.07.2013, the percentage of commission was replaced by the commission of Rs. 31.25/- per quintal for common grade and Rs. 32/- per quintal for grade A. Further, notification dated 24.11.2015 provides for the provisional rates of custom milled rice procured under specification and retained for distribution under decentralized procurement operation.

10.2. In the said notification, apart from the commission paid to societies on per quintal basis, PACS are also reimbursed for the mandi and labour charges, transportation charges, drriage @ 1% of MSP, custody and maintenance charges, interest charges for two months, milling charges, administrative charges, cost of new gunny bags.

11. Before us, ld. counsel for the assessee has contended that the transactions between the assessee corporation and the PACS are on principal to principal basis because the risk is on the PACS for the procurement of food grains and they have to make payment in advance and get it reimbursed from the State Government.

12. On the above identical factual matrix and narrations in this set of appeals, we note that for the issue before us, the Coordinate bench of ITAT Patna in ITA Nos. 8 to 71/Pat/2024 for AYs 2012-13 to 2014-15 has elaborately dealt with and given its finding. The relevant findings from para 12 of the decision are extracted below for ready reference:

12. We however fail to find any merit in the contention of the ld. counsel for the assessee and also find that the decisions referred are not applicable on the facts of the instant case. A perusal of the guidelines referred (supra) and other notifications, it remains an admitted fact that the complete procedure for procurement of foodgrains and to provide minimum support price to the farmers is prepared by the Central Government with full assistance of State Government. Further, the State Government appoints Nodal Agency and provides guidelines for working of PACS. Every activity of the PACS relating to procurement of foodgrains, payment of MSP to the farmers loading and unloading of foodgrains, warehousing, VAT charges if any, cost of gunny bags and even the interest to be spent by PACS on the banking credit facility awarded on the direction of State Government are given by Central and State Government with their Nodal Agencies which includes assessee also. All these guidelines of the State Government clearly indicates that the PACS are only working as an agent of the State Government and each of their activity connected to procurement of foodgrains from farmers, payment of MSP to farmers and bringing of the foodgrains to the godowns owned by

the State Government are part of the agency services. In the past, commission was received as a percentage of MSP and thereafter commission is paid on per quintal basis.

13. Since assessee corporation is paying commission to PACS which are working as agents, we are inclined to hold that commission paid by assessee to PACS is liable for deduction of tax at source u/s 194H of the Act. We, however, notice that assessee did not get proper opportunity of hearing before the assessing officer and even before ld. CIT(A). We also note that the assessing officer has calculated the TDS at the maximum rate of 20% on account of non-availability of PAN even though all PACS are having bank accounts. We also note that commission has been calculated by applying the rate of Rs. 31.25/- on the transaction for F.Y. 2011-12 but the said rate of Rs. 31.25/- was finalised on 26.07.2013 which indicates that correct amount of commission has not been calculated by the ld. AO. It is also observed that deductee, PACS are having banking facility and certainly must be having PAN and had the details of the same been made available to the assessing officer, TDS may not have been calculated at the maximum rate of 20%. Therefore, considering all the above referred facts and circumstances and in the interest of justice and being fair to both the parties and in order to compute the correct amount of commission paid and in order to ascertain the correct amount of tax to be deducted at source u/s 194H of the Act, the matter is restored to the file of the assessing officer for carrying out necessary verification and calculation. The assessee is also directed to provide full co-operation to the assessing officer by placing all relevant material in order to get the needful information about correct amount of commission and correct amount of TDS u/s 194H of the Act. Accordingly, effective grounds of appeal raised by the assessee in ITA No. 8/Pat/2024 are allowed for statistical purposes.

12.1 We concur with the above stated findings of the Coordinate bench since the fact pattern and the issue involved are same. Accordingly, effective grounds of appeal raised by the assessee in ITA No. 72/Pat/2024 are allowed for statistical purposes.

13. Since similar issue has been raised in remaining appeal being No. 73/Pat/2024 to ITA 135/Pat/2024, our decision rendered *supra* in case of ITA No. 72/Pat/2024 applies *mutatis mutandis* to all the remaining appeals being ITA No. 73/Pat/2024 to ITA No. 135/Pat/2024. Accordingly, these appeals are also allowed for statistical purposes.

14. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 29.04.2024 in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 29.04.2024.
JD, Sr. P.S.

Copy of the order forwarded to:

1. Appellant: Bihar State Food & Civil Supplies Corporation Limited
2. Respondent: ITO, Ward-2(1), Patna.
3. CIT(A)-
4. CIT-
5. CIT(DR),

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata