

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, JAIPUR
Before**

**Dr. Manish Borad, Accountant Member
&
Dr. S Seethalakshmi, Judicial Member**

**I.T.A. No.192/JPR/2024
Assessment Year: 2022-23**

Madan Lal Gupta **Appellant**
(PAN: AEMPG5548R)

Vs.

Income Tax Officer, Ward-2(1), **Respondent**
KOTA

Appearances by:

Shri Anoop Bhatia, CA appeared for Appellant
Sm. Monish Chaudhary, Addl. CIT appeared for Respondent

Date of hearing : 28.03.2024
Date of pronouncing the order : 30.04.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2022-23 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by ld. Commissioner of Income-tax, Addl/JCIT(A)-5, Chennai [in short ld. “CIT(A)”) dated 29.12.2023 arising out of the Intimation u/s 143(1) of the Act by DDIT, CPC, Bengaluru dated 17.02.2023.

2. The sole issue involved in this appeal is denial of TDS credit of Rs.90,792/- deducted u/s. 194Q of the Act.

3. Brief facts of the case are that assessee is an individual running sole proprietorship concern M/s. Satya Narayan Madan Lal & company. It furnished its income tax return on 28.07.2022 declaring total income of Rs. 6,32,740/- and also claiming prepaid taxes at

Rs.1,55,590/-. However, in the return processed u/s. 143(1)(a) of the Act dated 17.12.2023 the prepaid tax credit was allowed only to the extent of Rs.64,798/- and the balance tax credit of Rs.90,792/- was denied. Form No. 26AS duly reflects the TDS of Rs.1,55,590/- deducted under various sections including 194H as well as 194Q. However, TDS deducted u/s. 194Q was denied since it was deducted on turnover and no such turnover was reflected in the financial statement. Rectification application filed by the assessee did not bring any relief. Finally, the assessee preferred appeal before the Ld. CIT(A) but again failed to succeed. Now assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee referred to the detailed written submission as well as the paper book containing 138 pages and summarized his submission stating that the TDS deducted u/s. 194Q of the Act was for the turnover carried out by the assessee on behalf of its client. The assessee is a Kaccha Artia and acts only as an agent for its constituents and not as a principal. Drawing reference to sample invoices on which TDS deducted u/s. 194Q of the Act is stated that the amount invoiced by the assessee to the principal buyer and the value of goods transferred to the assessee by the farmer is exactly the same. The turnover of the assessee is only the commission but the TDS deducted on turnover u/s. 194Q is only an activity in the course of carrying out his responsibility as a commission agent and the invoice has to be raised on behalf of its principal. He thus, submitted that TDS deducted u/s. 194Q by the principal buyer cannot be refused by invoking section 37BA r.w.s. 199 of the Act.

5. On the other hand, Ld. DR vehemently argued supporting the orders of both the lower authorities.

6. We have heard the rival contentions and perused the relevant material available before us. The only grievance of the assessee before us is that Ld. CIT(A) erred in confirming the action of the CPC not granting credit of TDS for Rs.90,792/-. We observe that the assessee is a commission agent and its activity includes buying and selling of goods on behalf of its principal. In the income tax return assessee had furnished business codes namely 09005 relevant to general commission agents and commodity brokers and code 09028 meant for retail sale of products. Before moving further, we need to understand the business model of the assessee, wherein it purchases goods on behalf of its principal by procuring it from the farmers and for the very same amount the invoice is raised in the name of the principal buyer. So, the invoice of same amount is issued to the principal buyer and the corresponding 'vikray parchi' is issued in the Mandi to the respective farmers. So, admittedly, the amount invoiced by the assessee to the principal buyer and the value of goods transferred to assessee from the farmer is same and purely on behalf of its principal. Now, for carrying out such transaction assessee receives commission on which tax is deducted u/s. 194H of the Act. Such commission income is shown as a turnover. To this extent, there is no dispute and the credit of TDS u/s. 194H has been allowed.

7. The point of dispute is for the TDS deducted u/s. 194Q i.e. deduction of tax at source on payment of certain sum for purchase of goods and as per sub-section (1) of section 194Q any person being a buyer who is responsible for paying any sum to any resident for purchase of any goods of the value or aggregate of such value exceed Rs. 40 lacs in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1% of such sum which exceed Rs. 50 lacs, as income tax. This amendment is

inserted w.e.f. 01.07.2021 i.e. during the FY 2021-22 and the instant appeal of the assessee is for the very same year.

8. Now, the principal of the assessee on whose behalf assessee made the purchases, as discussed above, the assessee raised its invoice to its principal. Now, principal deducts the TDS u/s. 194Q and deposit it with the government and the said TDS is adjusted in the account of the assessee. Now, turnover of such purchase/sale made on behalf of the principal is not required to be reflected in the audited financial statement of the assessee because its turnover is only the commission and not the purchase and sale made on behalf of its principal. Sample invoices have been placed on record for necessary verification of the transaction where on the very same purchase amount TDS u/s. 194Q is deducted and tax deducted u/s. 194H on the commission element. Further, Central Board of Direct Taxes in its circular No. 452 in the year 1986 has clarified that so far as Kachha Aratias are concerned, the turnover does not include the sales effected on behalf of principals and only commission (gross) has to be considered by for the purpose of income tax u/s. 44AB of the Act.

9. Under these given facts and circumstances, we find that on account of the new amendment brought in section 194Q of the Act the principal of the assessee agent has deducted TDS u/s. 194Q of the Act in addition to section 194H for the commission paid to the assessee and, therefore, the assessee is entitled to credit of tax deducted u/s. 194H as well as sec. 194Q and we further hold that assessee is not required to disclose the turnover appearing in the tax deduction details u/s. 194Q because he is acting as the Kachcha Arhtia i.e. an agent and the turnover appearing in the sale invoices are merely the sales made against the equal amount of purchase made from the farmers and effectively it is not the turnover of the assessee. So far as the observation of the Ld. CIT(A), the TDS ought to have been deducted

u/s. 194J and 194Q, we fail to find any merit because section 194J refers to deduction of tax on fees for professional on technical services which is not at all applicable in the case of assessee and 194Q is applicable because it is deduction of tax at source on payment of certain sum for purchase of goods. Thus, grounds of appeal raised by the assessee are allowed as per terms indicated above.

5. In the result, appeal of the assessee is allowed as indicated above.

Order pronounced on April, 2024 in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Sd/-
(Dr. Manish Borad)
Accountant Member

Dated: 30th April, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – Shri Madan Lal Gupta, C-18, Krishi Upaj Mandi, Ramganj Mandi, Kota, Rajasthan-326519.**
2. **Respondent – ITO, Ward-2(1), Kota**
3. CIT(A), Addl./JCIT(A)-5, Chennai
4. CIT
5. Departmental Representative
6. Guard File.

True copy

By order
Assistant Registrar
ITAT, Jaipur Bench, Jaipur

1. Date of dictation- 15/04/2024
2. Date on which the typed draft order is placed before the Dictating Member and Other member 17/04/2024
3. Date on which the approved order comes to the Sr. P.S./P.S. - 30/04/2024
4. Date on which the file goes to the Bench Clerk 30/04/2024
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....