

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**
[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री राजेश कुमार, लेखा सदस्य
के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

**I.T.A. Nos.: 136 to 161/PAT/2024
Assessment Year: 2016-17**

**I.T.A. Nos.: 162 to 197/PAT/2024
Assessment Year: 2017-18**

**I.T.A. Nos.: 206 to 208/PAT/2024
Assessment Year: 2015-16**

***Bihar State Food & Civil Supplies Corporation
Limited.....Appellant***
[PAN: AACCB 0679 F]

Vs.

ITO, Ward-2(1), Patna.....Respondent

Appearances by:

Assessee represented by – Barun Kumar, CA.

Department represented by – Sushil Kumar Mishra, JCIT, D/R.

Date of concluding the hearing : April 29th, 2024

Date of pronouncing the order : May 1st, 2024

ORDER

Per Bench:

The bunch of appeals preferred by the assessee are against several orders passed by Learned Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] [hereinafter referred to Ld. 'CIT(A)'] for the Assessment Years (in short 'AY') 2015-16, 2016-17 & 2017-18.

2. Since the facts and issues involved in these appeals are identical, these appeals are taken together, heard together and disposed off together by way of this common order. For the sake of convenience, ITA No. 136/PAT/2024 is taken as the lead case and our decision shall apply, *mutantis mutandis* to all the remaining appeals captioned above.

3. Brief facts of the case are that the 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 (hereinafter referred to as 'PACS') at the district and village 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 usually announces, the Minimum Support Prices (MSP) for the crops like wheat/paddy. The PACS purchase the 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 carried out a survey u/s 133A of the Act on the assessee on 15.11.2017 and examined the transactions carried out by the assessee during F.Y. 2015-16 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 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, the ld. AO noticed that no details were filed as to the Permanent Accountant Number (PAN) of the PACS which left him with no option except to hold the assessee liable to non-deduction of tax at source at the rate of 20% of the commission payment. The amount of commission was calculated at specific rate of per quintal of paddy. An order u/s 201/201(1A) r.w.s. 194H of the Act prepared on 21.02.2018 for F.Y. 2015-16. Similar assessment order for F.Y. 2016-17 and 2017-18 were also prepared for non-deduction of TDS on commission. During the course of assessment proceedings, no submissions were filed by the assessee. Subsequently, the assessee preferred an appeal before the ld. CIT(A) but again failed to succeed as it could not appear on various

dates of hearing which mainly fall during the Covid-19 restriction period.

4. At the outset, ld. D/R informed the Bench that the Coordinate Bench in assessee's own case has decided the identical issue involved in ITA Nos. 8 to 71/PAT/2024 for AY 2012-13 to AY 2014-15 vide order dated 19.04.2024 by restoring all these appeals to the file of the ld. AO for carrying out necessary verification of the commission paid by the assessee and tax to be deducted u/s 194H of the Act from the said commission paid to PACS by the assessee corporation. The ld. D/R therefore, prayed that since the identical issue has already been restored to the file of the AO, therefore, the present appeals may also be restored to the file of the AO for computation of correct amount of TDS on the commission after taking into account the evidences which the assessee may file in support of its contentions.

5. The ld. A/R on the other hand, fairly considered that the issue involved in the aforesaid appeals has been restored by the Coordinate Bench under identical facts.

6. After hearing the rival contentions and perusing the material available on the record, we find that identical issue has been restored to the file of ld. AO for determination of correct amount of TDS on the commission paid by the assessee to PACS in ITA No.8 to 71/Pat/2024 A.Y. 2012-13 to 2014-15. The operative part of the order reads as under:

“8. We have heard the rival contentions of the parties and perused the record 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 Cooperative Society (PACS).

9. We note that the State Government in order to make purchase from the farmers at the minimum support price issued certain guidelines and the same are mentioned in the letter dated 07.12.2011 issued by letter no. 9624 by the Development Commission of Bihar. The copies of the same are placed at page 8 to 15 of the paper book. In para 12 of the said guidelines there is 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 foodgrains and carrying out of business activities etc. and also to provide facility for warehousing of the foodgrains. 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 MRP's have been fixed for wheat/paddy of foodgrains per quintal. Further, for carrying out all these activities, the PACS were given to 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 in the paper book at page 4 notification dated 24.11.2015 has been filed which provides for the provisional rates of custom milled rice procured under specification, retained for distribution under decentralized procurement operation. In the said notification apart from the commission paid to societies on per quintal basis, the PACS are also reimbursed for the mandi and labour charges, transportation charges, drriage @ 1% of MSP, custody and maintenance charges, interest charges for 2 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 foodgrains and they have to make payment in advance and get it reimbursed from the State Government.

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

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Bihar State Food & Civil
Supplies Corporation Limited.

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.

*14. Since similar issue has been raised in remaining appeal being No. 9/Pat/2024 to ITA 71/Pat/2024, our decision rendered supra in case of ITA No. 8/Pat/2024 shall apply *mutatis mutandis* to all the remaining appeals being ITA No. 9/Pat/2024 to ITA No. 71/Pat/2024. Accordingly, these appeals are also allowed for statistical purposes.”*

7. Since the facts of the present appeals are identical with variance as to the quantum of commission and TDS thereon, we respectfully following the decision of the coordinate bench, restore these appeals to the file of the AO for correct determination of amount of TDS on commission after affording a reasonable opportunity to the assessee. In view of the above, ITA No. 136/PAT/2024 is allowed for statistical purposes.

8. Since similar issue has been raised in the other appeals, our decision shall apply *mutatis mutandis* to all the remaining appeals being ITA Nos. 137 to 161/PAT/2024, ITA Nos. 162 to 197/PAT/2024 and ITA Nos. 206 to 208/PAT/2024. Accordingly, all the appeals filed by the assessee are allowed for statistical purposes.

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9. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 1st May, 2024.

Sd/-

[Rajpal Yadav]
Vice-President

Sd/-

[Rajesh Kumar]
Accountant Member

Dated: 01.05.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Bihar State Food & Civil Supplies Corporation Limited,
Khadya Bhawan, Daroga Rai Path, R Block, Patna, Bihar-
800001.**
2. **ITO, Ward-2(1), Patna.**
3. CIT(A)-
4. CIT-
5. CIT(D/R), Patna Bench, Patna.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata