

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 555/JP/2024  
निर्धारण वर्ष / Assessment Year : 2023-24

|   |             |                                 |
|---|-------------|---------------------------------|
| Santosh Choudhary<br>D-4, Prop. Satya Narayan Anil Kumar<br>Mandi Yard, Mandi Road, Baran | बनाम<br>Vs. | The ITO<br>Ward -Baran<br>Baran |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEQPC 4542 M                                      |             |                                 |
| अपीलार्थी / Appellant   |             | प्रत्यर्थी / Respondent         |

निर्धारित की ओर से / Assessee by : Shri C.P. Chawla, AR  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 24/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 29/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. Addl. CIT(A)-2, Chennai dated 02-03-2024 for the assessment year 2023-24 raising therein following grounds of appeal.

1. On the facts and in the circumstances of the case and in law the learned DCIT, CPC Bangalore has erred in passing intimation u/s 143(1) of the Act, on 11/01/2024, which is void-ab-initio, deserves to be quashed.

2. On the facts and in the circumstances of the case and in law the Ld. Addl./CIT (A)-2 Chennai is not justified in confirming the intimation passed u/s 143(1) of the Act, by the DCIT, CPC Bangalore, who restricted credit of TDS, u/s 194H & 1940 at Rs 34,316/- as against claimed in the return at Rs. 2,96,580/-, by invoking the provisions of rule 378A of Income Tax Rules 1962, despite the fact that the said intimation passed u/s 143(1), does not contain any basis/justification for rejecting the claim of appellant that she (assessee) is a Kachha Adhatiya (Commission Agent) and filed return of income, on the basis of Adat/Commission received as gross receipt.

3. On the facts and in the circumstances of the case and in law the Ld. Addl./CIT (A)-2 Chennai has erred in not treating the appellant as Kachha Adhatiya (Commission Agent) holding/observing that, "had the appellant been solely commission agent buyer would have deducted tax at source under section 1941, not 1940", notwithstanding the fact that the appellant is a Kachha Adhatiya (Commission Agent) and registered with Baran- Krishi Upaj Mandi Samiti, accordingly shown Adat/Commission as gross receipt in the return of income and consequently erred in confirming disallowance of credit of TDS, u/s 194H & 194Q amounting to Rs. 2,62,264/- made by the DCIT, CPC Bangalore, as per the provisions of rule 37BA of Income Tax Rules 1962, while processing return u/s 143(1) of the Act on 11/01/2024."

2.1 The only issue involved in the present appeal is with regard to denial of credit of TDS of Rs.2,62,264/- deducted under section 194 H and 194Q of the Income Tax Act.

2.2 On this issue, the Bench has heard the counsel for both the parties and we have also perused the material placed on record and the orders passed by the revenue authorities. From the records we noticed as per the facts of the present case that the assessee claimed TDS amounting to Rs Rs. 2,53,077/- u/s 194H and

Rs.43,503/- u/s 194Q of the Act, in the return of income for the year under consideration. Thus, total tax deducted at source, aggregating to Rs.2,96,580/-was claimed. Whereas, the Id. DCIT, CPC Bengaluru, at the time of processing of return u/s 143(1)(a) of the Act on 11/01/2024, allowed credit of TDS to the extent of Rs. 34,316/- as per the provisions of Rule 378A of Income Tax Rules, 1962, despite the fact that the assessee is a Kachha Artia and not required to disclose turnover on which tax was deducted u/s 1940 of the Act, as mentioned in Form 26AS. Accordingly, entire Adat (Commission) aggregating to Rs. 55,71,380/- was shown in the return of income. Despite the fact that assessee had specifically pleaded that she is running its business in the status of individual as a proprietor of concern namely Satyanarayan Anil Kumar Baran and she had filed her return of income on 25.07.23 where in business code- 09005, relevant to the commission agent was shown and total income was also declared at Rs. 9,18,360/- claiming TDS amounting to Rs. 2,53,077/- and Rs. 43,503/- under section 194 H and 194 Q respectively. The said figures are contained in the Form No. 26 AS which is placed at paper book page number 6 to 25. And even in the return of income for the year under consideration the assessee had shown Aadat ( Commission) totaling Rs. 5,57,13,780/- the details of which are also placed at paper book page number 26 to 31. The Bench has also noticed that from the very beginning the assessee had specifically pleaded that the assessee had claimed TDS deducted u/s 194H of the

Act at Rs. 2,53,077/- and also shown corresponding receipts i.e. Adat/Commission in the return of income, for the year under consideration. Therefore, while processing return of income the AO should have allowed full credit of TDS deducted u/s 194H of the Act as claimed in the return at Rs. 2,53,077/- These facts clearly show that the AO has grossly erred in not allowing credit of above TDS, by invoking provisions of Rule 37BA of Income Tax Rules 1962, totally ignoring the fact that the Assessee is Kachha Artla and purchases goods from the farmers on behalf of buyers and for such type of transaction the assessee receives commission on which tax is deducted u/s 194H of the Act. And it was also pleaded that the assessee being Kachha Aratiya, is not required to disclose turnover on which tax was deducted u/s 194Q of the Act as reflecting in Form 26A5 as the assessee acts as Kachha Artia i.e. Agent and the turn over appearing in the sale invoices are merely sales made against the equal amount of purchase made from the farmers and which cannot be treated, as turnover of the assessee. This being so, the assessee is entitled to credit of tax deducted u/s 194Q of the Act. In support thereof the appellant has also placed on record documentary evidences as under:-

- (i) Copy of certificate of Krishi Upaj Mandi Samiti, in support of assessee's claim that she is a Registered Kachha Aratiya in Baran Krishi Mandi Samiti. (In the Paper Book-Page No33.)
- (ii). Copy of CBDT Circular no. 452 dated 17/03/1986 issued by the Central Board of Direct Taxes. (In the Paper Book-Page No. 34-37)

(iii) Copy of ITR -AY. 2023-24 and other documents as mentioned in the submission.

Therefore it was pleaded that the entire TDS deducted under section 194 H and 194Q and claimed in the return was allowable to the appellant. Further And in support thereof the ld. AR also relied upon circular number 452 dated 17 March 86 where in it has been clarified that so far katcha artia is concern , the turnover does not include the sales affected on behalf of the principals and only Commission has to be considered for the purpose of Income Tax under Section 44 AB of the act. And also placed on record some sample invoices raised by the assessee, which are verifiable from form number 26 AS. Apart from this Reliance has also so been placed on the latest decision of the Co-ordinate bench of ITAT in the case of Madan Lal Gupta Vs. ITO, in ITA No. 192/ JPR/ 2024 decided on 30th of April 24. After having gone through the facts and arguments of both the parties and also perusal of the documentary evidences placed on record as well as judgement relied upon by the assessee I am of the considered view that it has already been clarified in circular number 452 dated 17th of March 86 issued by the Central Board of Direct taxes that so far as kachha Artia is concerned , then the turnover does not include the sales affected on behalf of the principals and only Commission has to be considered for the purpose of Income Tax under Section 44 AB of the Act and in support thereof the assessee is Kachha artia and made purchases from the

farmers on behalf of buyer and for the very same amount the assessee raised its invoice to the buyer. Therefore for such type of transactions, the assessee receives Commission on which tax is deducted under section 194H of the Act. Also in some cases buyers deduct Tax u/s 194Q of the Act apart from u/s 194 H and in this regard sample invoices raised by the assessee had also been placed on record. Moreover in support of these above contentions, the Co-ordinate bench in the case of Shri Madan Lal Gupta vs ITO (supra) has already considered the identical circumstances and had categorically held as under:-

“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 acting as the Kachha 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 Ld. CIT(A), the TDS ought to have been deducted u/s 194J and not 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 the assessee and 194Q is applicable because it deduction of tax at source on payment of certain sum for purchases of goods. Thus, grounds of appeal raised by the assessee are allowed as per terms as per terms indicated above. In the result, the appeal of the assessee is allowed as indicated above.”

Therefore taking into consideration the entire discussion with regard to the factual as well as legal proposition, the Bench directs the AO to allow the credit of TDS deducted under section 194 H and 194Q to the assessee. Thus this ground raised by the assessee stands allowed.

3.0 In the result, the appeal of the assessee is allowed with no orders as to costs.

Order pronounced in the open court 29 /08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2024

\*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Santosh Choudhary, Baran
2. प्रत्यर्थी / The Respondent- The ITO, Ward –Baran, Baran
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.555/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar