आयकर अपीलीय अधिकरण,'सी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 1937/Chny/2024**
& Stay Petition No: 40/Chny/2024
[in ITA No: 1937/Chny/2024)]
निर्धारणवर्ष / Assessment Year: 2017-18

VNC Steel Distributors, No.2, Industrial Estate, S. Vellalapatti, Karur – 639 004. **[PAN: AADFV-9137-E]** (अपीलार्थी/Appellant)	v.	Deputy Commissioner of Income Tax, Circle -1(1), Trichy. (प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. Abhinov Vaidyanathan, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri. R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 21.08.2024
घोषणा की तारीख/Date of Pronouncement : 14.11.2024

आदेश /O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 24.05.2024 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

Appeal under Section 253(1) of the Income Tax Act, 1961 ***('IT Act')*** *against the order dated May 24, 2024 passed under*

Section 250 of the IT Act by the Ld. Commissioner of Income Tax (Appeals) ***('Ld. CIT(A)'),*** *National Faceless Appeal Centre for the Assessment Year* ***('AY')*** *2017-18.*

Issue 1: Disallowance of Rs.3,03,99,796/- under Section 40(a)(ia) of the IT Act in respect of incentives provided to dealers for reason that tax was not deducted under Section 194H of the IT Act.

1. *That the Ld. CIT (A) has erred in holding that the payments made to dealers for various incentives provided constitutes payments in the nature of commission and therefore subject to deduction of tax under Section 194H of the IT Act.*

2. *Without prejudice, the Ld. CIT(A) ought not to have held that the provisions of Section 194H would apply without properly appreciating the fact that the incentives were all given in non-monetary terms and the provisions of Section 194H being made expressly applicable only for 'sums paid', cannot be invoked for non-monetary payments.*

3. *That the Ld. CIT (A) has failed to appreciate that existence of principal agency relationship between the payer and payee is a sine qua non for invoking the provisions of Section 194H and that in the present facts, such a relationship does not exist and therefore, provisions of Section 194H cannot be invoked.*

4. *Without prejudice, the Ld. CIT(A) erred in holding that relationship between the Appellant and dealers constitute relationship in the nature of principal-agent merely for reason that the Appellant recommends the price at which the goods must be sold by the dealers and that the dealers are required to follow certain guidelines put in place by the Appellant.*

5. *The Ld. CIT(A) has failed to understand the fact that the Appellant bears no risk in respect of the business of the dealers and that the stock sold to the dealers remain at the property and risk of the dealers and therefore, the dealers and Appellant can by no stretch of imagination be considered to be having a relationship as that of principal-agent.*

6. *That the Ld. CIT (A) failed to consider the undertaking provided by various dealers in order to substantiate that no service has been provided to the Appellant nor have any goods been sold on behalf of the Appellant.*

Issue 2: Disallowance of Rs.251,293/- under Section 40(a)(ia) of the IT Act for non-deduction of tax at source under Section 194C of the IT Act in respect of ESI, PF and EPF contributions.

7. *That the Ld. CIT (A) has erred in holding that the Appellant has not deducted tax under section 194C on the payments in nature of EPP, ESI an contributions made by the Appellant to the Employees Fund Organization without considering the argument of the Appellant that the payments were made directly to the Government and not to the contractors and thus, the provisions of Section 194C do not get attracted.*

8. *That the Ld. CIT (A) ought to have considered the submissions made by the Appellant that as per Section 2(f) of the Employees Provident Fund Act, 1952 and Section 30 of the Employees' Provident Fund Scheme, the Appellant is the employer of the job workers and that the EPP, ESI and PF contributions are a statutory mandate cast upon the Assessee.*

9. *That the Ld. CIT (A) has failed to consider that Section 194C provides for deduction of tax for any sum paid by any person to a resident in pursuance of a contract between the contractor and a specified person. However, in the present case, the payment made by the Appellant is in pursuance of a statutory mandate and not in pursuance of a contract.*

10. *That the Ld. CIT (A) has failed to establish that the payment is not made by the Assessee to the contractor or the job workers, rather it is made in pursuance of a statutory duty to the Employees Provident Fund Organization.*

Issue 3: Disallowance of Rs.255,375/- under Section 40(a)(ia) of the IT Act in respect of meet and greet expenses provided to dealers for reasons that tax was not deducted under Section 194H of the IT Act.

11. That the Ld. CIT (A) has erred in holding that the payments made by the Appellant towards various meet and greet events are towards advertisement, promotion expenses and hence, subject to deduction of tax under Section 194C of the IT Act.

12. That the Ld. CIT(A) ought to have appreciated that the expenses incurred for meet and greet do not involve 'carrying on any work' and consequently the provisions of Section l 94C cannot be attracted in the instant case.

13. That despite the Appellant placing various bills and vouchers to substantiate the nature of expenses, the Ld. CIT (A) erroneously construed the expenses to be in the nature of advertisement/ promotional expenses.

14. The consequential levy of interest under Section 234B and Section 234C are not sustainable in law and merits to be set aside.

15. The Appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at, the time of hearing of the appeal."

3. The brief facts of the case are that, the assessee is a partnership firm engaged in the business of distribution of TATA Steel branded steel products such as TATA Tiscon, TATA GI Pipes, TATA Structura etc., to the retail channel in Tamilnadu & Pondicherry as an only Authorised Distributor. The assessee has filed his return of income for the assessment year 2017-18 admitting a total income of Rs.16,67,94,630/-. The case was selected for scrutiny and assessment was framed by passing an order u/s. 143(3) of the Act dated 26.12.2019 by accepting the return of income filed by the assessee. Thereafter, the revision

proceedings u/s.263 of the Act was initiated by the ld.PCIT, Madurai - 1 and passed an order u/s.263 of the Act dated 29.03.2022 by directing the Assessing Officer to reframe the assessment after verifying the applicability of TDS on various expenses claimed by the assessee in respect of which TDS was not made. Subsequently, after issuing statutory notices to the assessee, the Assessing Officer passed an order u/s.143(3) r.w.s. 263 of the Act by disallowing certain expenditure claimed by the assessee u/s.40(a)(ia) of the Act without accepting the submissions made by the assessee as TDS provisions are not applicable to these expenditures by presenting various facts and case laws in support of the same as detailed below:

> *4.6.1 Expenditure on account of EPF, ESI and PF contribution of Job workers (8,37,642). The assessee has not deducted TDS under 194C on EPF, ESI and PF contribution of Job workers. It stated that these payments were not made directly to the Job workers but to the Government. These payments are wholly and exclusively related to business and thus should be allowed under section37(1). It also stated that that Social Security contribution to PF and ESI of Job workers was made as welfare measure and these are not payments that can be directly attributed to any 'work' so TDS under 194C not attracted.*
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> *The contention raised by the assessee is not found to be tenable for the reasons discussed below.*
>
> *It is not disputed in this case that the labors' are working in contractual capacity attracting the provisions of TDS. The payment is made to the labor contractor by the assessee and not directly to the individual laborers. Thus, the provisions of Section 194 C are applicable on entire payment made to the contractor*

without any exclusion. Thus, the whole amount paid to contractor comes under sum for the purpose of Section 194C. It does not make any difference that the assessee paid this amount to the Govt. and not to Job workers because it is paid on behalf of Job workers who are employed in contractual capacity with the assessee as these job workers have been hired by the contractor rendering contractual services to the assessee. Circular No.23 of 2017 exempts only GST charges in the invoice if shown separately. But the contract is awarded considering the whole amount that is to be paid to the contractor. Therefore, while deducting TDS on Contractual payment to the contractor for hiring of job workers, the assessee cannot exclude the payment made towards PF and ESI contributions of Job workers. It ought to have deducted TDS on entire payment made to Contractor as per provisions of section 194C.

Since the assessee has failed to deduct TDS on EPF, ESI and PF contribution of Job workers (8,37,642) from the total payment made to contactors for hiring Job workers, 30% Disallowance under Section 40(a)(ia) is made on this amount (Rs.8,37,642) which is calculated at Rs.2,51,292.60

4.6.2 Non Deduction of TDS on Advertisement and Promotional on promotional schemes Dealers Expenditure - Incentive paid to (Rs.10,13,32,654.26)Assessee has stated that since the relationship between the dealer and the assessee is principal to Principal, there is no obligation on part of the assessee to deduct TDS u/s.194C of the Act.

Section 194H of the ITA states that "Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent...
"Commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities..."

In this case, the dealers are providing Advertisement and Promotion services to the assessee and earning commission income from the assessee, therefore TDS under 194C is attracted on entire payment made to the dealers.

Further, as discussed above in para 4.5 (iii), it is observed that the relationship between assessee and the dealers is that of a Principal to agent relationship and not a Principal to Principal relationship as assessee exercises much control over the dealers and provisions of Section 194H are very much applicable in this case as Dealer incentive schemes are a kind of commission paid to the dealers for sales promotion and assessee via these schemes exercises control over the performance of Dealers. It also has control over the appointment and termination of contracts with the Dealers. Dealer's incentive schemes are a way to regulate the sales performance of the dealers by the assessee as the incentives are given to the dealers by the assessee only on achieving of a set Target. Thus the assessee here acts a Principal while the Dealers act as its agents.

The payments made by the assessee under Dealer incentive schemes are in nature of additional remuneration paid to the contractors for their superior performance in rendering Advertisement and Sales Promotion services to the assessee. Thus these are only commission income though paid in different name.
Therefore, the incentives or discounts given to dealers under the dealership agreement are in the nature of commission, liable to TDS under section 194H of the Income-tax Act, 1961.

Since the assessee has failed to Deduct TDS under section 194H on Payment made to dealers on Dealer Incentive Schemes worth Rs.10,13,32,654.26, 30% Disallowance under section 40(a)(ia) is made. This amount is calculated at Rs.3,03,99,796.28

4.6.3 Non deduction of TDS on Expenses under Advertisement and Promotion Head on account of Promotional expenditure on Meet and Events (Rs.8,51,250/-) as same are liable for TDS deduction under 194C. Assessee has stated that since these expenses were incurred on purchase of travel tickets, food expenses, stationery for promotional meets, same were not liable to TDS deduction. However, it is observed that these payments have been made to the hotels for promotional meets. The nature

of expense incurred is in the form of advertisement to promote the sales of the company so TDS u/s.194C is applicable.

As assessee has failed to Deduct TDS under section 194C on payment of Rs.8,51,250 incurred under Advertisement and promotional expense on organizing business promotion meets, 30% Disallowance under section40(a)(ia) is made, which is calculated at Rs.2,55,375/-.

S.No	Nature of expenditure	Amount disallowed u/s. 40(a)(ia) (in Rupees)
1	Expenditure on account of PF/ESI contribution to Job workers to the tune of Rs.8,37,642/-	2,51,293/-
2	Advertisement and promotional expenditure –incentive paid to the dealers on promotional schemes to the tune of Rs.10,13,32,654/-	3,03,99,796/-
3	Meet and event expenses to the tune of Rs.8,51,250/-	2,55,375/-
	Total	**3,09,06,464**

Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the ld.CIT(A).

4. After considering the records and submissions of the assessee, the ld.CIT(A) confirmed the Assessing Officer's order stating that expenditure on account of EPF, ESI & PF contribution of job workers is nothing but payment to contractors and liable for TDS u/s. 194C of the Act. Further, the payments made towards incentive to dealers in the form of

sales promotional schemes are liable for TDS u/s.194H of the Act. The promotional expenditure on meets and events also in the form of payment to contractors / hotels for promotional events and hence liable for TDS u/s. 194C of the Act.

"7.2. The appellant's contentions in the form of Grounds of appeal and submissions made have been considered. It is seen that the appellant had not deducted TDS under 194C on payments made in the nature of EPF, ESI and PF contribution of Job workers. The appellant has stated that these payments were not made directly to the job workers but to the Government and claimed that these payments were wholly and exclusively related to business and thus should be allowed under section 37(1). The appellant has also claimed that TDS under 194C was not attracted on such payments. The argument of the appellant is not found to be acceptable. It is seen that the payments were made to the contractor for providing manpower. Also, in the present case, the manpower are working in contractual capacity through the contractor. Further, it is seen that the payment was made to the manpower contractor and not directly to the individual manpower. As such, it is held that the provisions of Section 194C are applicable on entire payment made to the contractor. Also, held that it does not matter whether the appellant paid this amount to the Government on behalf of Job workers since the employees are employed in contractual capacity as these were hired by the contractor. Also, it is held that Act specifies no exemptions for such payments made to the contractor. In view of the above discussion, this appellate authority is of the opinion that the claim of the appellant that TDS provisions cannot be applicable for such payments cannot be accepted and the addition in this regard is upheld. Hence, the Ground No. 2 of the appeal is dismissed.

8.2. The appellant's contentions in the form of Grounds of appeal and submissions made have been considered. It is seen that the appellant had not deducted TDS on payments made to dealers on promotional schemes. At first, the appellant has stated that these payments were not made in cash but in form of various non-monetary schemes Viz. Gold Coin Scheme, Atoot Rishtey Scheme, Foreign Scripts etc.. The appellant has claimed that since no payment was done to the dealers, TDS provisions does not attract in these case. With regard to the claim, it is seen that the

appellant has paid an amount Rs.10,13,32,654/- towards various promotional schemes. In this regard, it is held that the TDS provisions are applicable on all types of payments irrespective of monetary or non-monetary payments. There is no such TDS exemption for the non-monetary payments-made. Moreover, the appellant has claimed such non-monetary expenditure in its books of accounts. As such, the claim of the applicant that no TDS provisions applicable for payments made other than in cash cannot be accepted.

8.2.1. Further, the appellant has claimed that the relationship between it and the dealers is buyer-seller and not principal-Agent. As such, the appellant has claimed that TDS under 194H are not attracted on such payments made to dealers by way of non-monetary benefits. The appellant has submitted that the schemes were there to promote the sales and turnover of the business. Further, the appellant has submitted that there is no risk borne by it if the goods invoiced in the name of dealers were not sold. The appellant has stated that the dealers are not acting on behalf of it, but, the buyers of the TATA Company products. The contention of the appellant is not found to be tenable. It is seen that the payments were made by the appellant to the dealers for promotion of sales. Though the appellant claims the dealers are buyers of TATA products, the buyers actually purchase goods from the appellant. It is pertinent to mention that increase in sales of the dealer's amounts to increase in sales of the appellant, which benefits the appellant. As such, it is held that the appellant has a direct gain through the said promotional activities and the payments made to the dealers is to increase his own business.

8.2.2. On perusal of the appellant's submission, it is seen the dealers are appointed by the appellant itself and the appellant has full power to appoint as well as terminate, the appointment of dealers. Also, it is seen that appointment letter issued to the dealers clearly states the terms of sales, benefits entitled to dealers and expectations sought from them. Further, the assessee offers incentive and commission to dealers based on their performance. Also, it is Seen that the appellant determines as to at what price the dealer will buy, stock or sell the goods. The appellant also provides capacity building measures to the dealers in form of training programs, technical sessions etc at its own cost. Besides, the appellant conducts audit at regular intervals to monitor compliance of the guidelines mentioned in appointment of dealers. These all conditions specifically says the

relationship between appellant and the dealers is Principal-Agent relationship. The appellant has stated that the terms and conditions are laid down to the dealers for maintaining the TATA Company's standards and policies. The same cannot be accepted as the appellant has the control over dealers in respect of the price, business, training, etc.. Therefore, the contention of the assessee that dealer incentive scheme of the assessee are on principal-to principal basis, does not stand to the test of facts and clauses of the dealer appointment letters. In normal situation of principal-to principal relationship one cannot control the other. However, in the present case, the assessee exercises control over the performance of the dealers through the Dealer incentive schemes. As such, the relationship between appellant and dealers is that of Principal to agent relationship where the appellant acts as Principal and dealers act as Agent. In view of the above discussion, this appellate authority is of the opinion that the payments made by the appellant attracts TDS provisions u/s.194H of the Act and the contentions of the appellant is not considered.

8.3. The case laws relied upon by the appellant are considered but not found to be acceptable in respect of the subject matter of the appeal. As seen from the case laws that courts have held that relationship between the appellant and dealers is not principal and Agent. However, in the present case it is clearly established that the relationship between the appellant and dealers is principal-agent. Vide grounds of appeal, the appellant has also contended that personal hearing was not granted to the appellant by the AO. In this regard, the appellant has not stated any reasons as to how non grant of personal hearing through video conference is violation of principal of natural justice. Further, it is seen that the appellant was provided opportunities for 5 times during the assessment proceedings and he had compiled to all the said notices issued. Moreover, the AO ha considered all the objections raised by the appellant and passed a well-reasoned order. Therefore, the objections of the appellant are not accepted.

8.4. In view of the above discussion, and bearing in mind the entirety of the case accompanied by the fact that appellant has made payments to the dealers, who are in principal-agent relationship and the appellant failed to deduct TDS as per the provisions of the section 194H of the Act, it is opined that the order of the Assessing Officer does not suffer from any infirmity to warrant interference in this regard. Therefore, the addition

made therein is sustained. As such, appellate authority is of the opinion that this ground of appeal does not have any leg to stand upon and hence, the Ground No. 3 of the appeal raised by the appellant is hereby dismissed.

9.2. The appellant's submissions have been considered. It is seen that the appellant had not deducted TDS under 194C on payments made towards expenditure on meet and events. The appellant has stated that these expenses were incurred on purchase of travel tickets, food expenses, stationery for promotional meets, same were not liable to TDS deduction under Section 194C.However, it is observed that these payments have been made to hotels for promotional meets. The nature of expense incurred is in the form of advertisement to promote the sales of the company. Since the expenditure was incurred towards promotion of business sales, the same needs to be considered as a contract and as such the payment is liable get TDS deducted u/s 194C. Since the appellant failed to deduct the TDS as per the provisions of the Act, The AO has rightly disallowed the same. As per the above discussion, this appellate authority is of the opinion that the claim of the appellant cannot be entertained and the addition in this regard is upheld. Hence, the Ground No. 4 of the appeal is dismissed.

Aggrieved by the order of the ld.CIT(A), the assessee is before us.

5. Disallowance of Rs.2,51,293/- towards EPF, PF & ESI contribution of the job workers:

5.1 The ld.AR submitted that these payments have been directly made by the company towards contribution to EPF, ESI with respect to job of workers. Since, it is employee related expenditure, the ld.AR stated that these expenditures to the tune of Rs.8,37,642/- are not liable for TDS u/s.194C of the

Act. The ld.AR also filed copies of remittances confirmation slips substantiating that the payments have been made to EPFO, Trichy (PB page no. 149 to 164) in support of the expenditure made by the assessee and prayed for deleting the disallowance made u/s. 40(a)(ia) of the Act to the tune of Rs.2,51,293/- for non-deduction of TDS.

5.2 Per contra, the ld.DR stated that the assessee has made payments to the Department of EPFO, Trichy, however the payment channels are in the name of the Contractor, who has supplied the job workers and hence, this payment is made on behalf of the contractor. Therefore, it amounts to payment towards contractors and hence, liable for TDS u/s.194C of the Act and prayed for confirming disallowance made by the Assessing Officer which is confirmed by the ld.CIT(A).

5.3 We have heard the rival contentions and gone through the records available and orders of the lower authorities. It is admitted fact that the assessee has made payments to ESI, PF authorities on behalf of labour supplier i.e. contractor. We note that the assessee has made payments towards EPF & ESI contributions; however these payments are made in the name

of the contractor, but not in the name of the assessee. Hence, these payments are nothing but payments made to the contractor towards his liabilities and hence, in our considered view, these payments are liable for TDS u/s.194C of the Act. Therefore, we are inclined to confirm the order of the ld.CIT(A) in disallowing this expenditure u/s.40(a)(ia) of the Act by dismissing the ground Nos.7 to 10 raised by the assessee.

6.Disallowance of Rs.3,03,99,796/- payment towards incentive paid to dealers on promotional schemes:

6.1 The ld.AR stated that these payments are made to the dealers for promotion of products in the state of Tamilnadu and Pondicherry. These payments are not in the nature of commission and also not paid in cash, but in the form of various non-monetary schemes like Gold Coin Scheme, Atoot Rishtey Scheme and Foreign Scripts etc. The ld.AR stated that since these payments are not made to the dealers and hence, the provisions of TDS u/s.194H of the Act is not applicable. The ld.AR stated that the appellant had not deducted TDS on payments made to dealers on promotional schemes. The assessee has claimed that since no payment was done to the dealers, TDS provisions does not attract in these instances.

Further, the assessee has claimed that the relationship between it and the dealers is buyer-seller and not principal-Agent. The Ld.AR argued that the assessee has claimed that TDS under 194H are not attracted on such payments made to dealers by way of non-monetary benefits. The assessee has submitted that the schemes were there to promote the sales and turnover of the business. Further, the ld.AR stated that there is no risk borne by it if the goods invoiced in the name of dealers were not sold. Since, the assessee and dealers are working on principal to principal basis, the TDS provisions are not applicable for this kind of business promotional expenditure spent by the assessee and not paid to the dealers.

6.1.1 Further, the assessee relied on the various judicial decisions laying down the difference between the relationship of 'Principal-Agent' and 'Principal-Principal' as below:

(i) Bharti Cellular Limited vs ACIT [2024] 462 ITR 247 (SC)

(ii) Singapore Airlines Ltd vs CIT [2022] 144 Taxmann.com 221 (SC)

(iii) CIT vsIntervet India (P) Limited [2014] 364 ITR 238 (Bombay HC)

(iv) PCIT vs Shalimar Chemical Works Ltd [2018] 96 Taxmann.com 275 (Calcutta HC)

(v) CIT vs Jai Drinks (P) Ltd [2011] 336 ITR 383 (Delhi HC)

(vi) Ahmedabad Stamp Vendors Association vs Union of India [2002] 257 ITR 202 (Gujarat HC)

(vii) Gujarat Tea Processors & Packers Ltd vs DCIT [2012] 28 taxmann.com 187 (Gujarat HC)

(viii) Nokia India (P) Ltd vs.DCIT [2020] 114 taxmann.com 442 (Delhi Tribunal)

6.2 Per contra, the ld.DR stated that these are the payments made which is nothing but amount passed on to the dealers in the form of commission and hence, the order of the ld.CIT(A) on this issue made please be confirmed.

6.3 We have heard the rival contentions, gone through the records available and orders of the lower authorities. It is an admitted fact that the assessee is a sole distributor of steel products of TATA Tiscon for the state of Tamilnadu and Pondicherry. The assessee in turn has appointed various dealers across the state of Tamilnadu and Pondicherry for making a retail sales of the TATA Tiscon products. The assessee has submitted the appointment letters for the various dealers for distribution of products through other dealers across the state (page no. 1 to 56 of PB). Further, the products of TATA Tiscon have been supplied to the dealers appointed by the assessee on Principal-Principal basis with a fixed dealer margin

along with monthly and annual dealers scheme if any provided by the manufacturer i.e., TATA Tiscon. We note that the risk and rewards of ownership of goods are transferred to dealers once the goods are invoiced and delivered to them in their place of business and hence, the relationship between the assessee and the dealers is only seller and buyer and not that of Principal-agent. Therefore, there is no agency between the assessee and the dealers and hence, the payments made towards promotional activities like Gold Coin Scheme, Atoot Rishtey Scheme, Foreign Scripts etc does not attract TDS u/s.194H of the Act, which are provided as target incentive to increase the volume of sales. Since, these payments are made by the assessee towards a promotional activities to increase the sales volume of the products on Principal-Principal basis, we are of the considered view that, there is no relationship of Principal-Agent between the assessee and the dealers appointed in the State and hence, the provisions of section 194H of the Act is not applicable to these payments.

6.4 It is important to note that the assessee's reliance on Hon'ble Apex Court decision in the case of Bharti Cellular Limited vs ACIT [2024] 462 ITR 247 (SC), wherein the Hon'ble

court differentiated the pure trading activity of the distributor and the agency business for the purpose of applicability of section 194H of the Act by holding as under:

> *"39. Coming back to the legal position of a distributor, it is to be generally regarded as different form that of an agent. The distributor buys goods on his account and sells them in his territory. The profit made is the margin of difference between the purchase price and the sale price. The reason is, that the distributor in such cases is an independent contractor. Unlike an agent, he does not act as a communicator or creator of a relationship between the principal and a third party. The distributor has rights of distribution and is akin to a franchisee. Franchise agreements are normally considered as sui generis, though they have been in existence for some time. Franchise agreements provide a mechanism whereby goods and services may be distributed. In franchise agreements, the supplier or the manufacture, i.e. a franchisor, appoints an independent enterprise as a franchisee through whom the franchisor supplies certain goods or services. There is a close relationship between a franchisor and a franchisee because a franchisee's operations are closely regulated, and this possibly is a distinction between a franchise agreement and a distributorship agreement. Franchise agreements are extremely detailed and complex. They may relate to distribution franchises, service franchises and production franchises. Notwithstanding the strict restrictions placed on the franchisees – which may require the franchisee to sell only the franchised goods, operate in a specific location, maintain premises which are required to comply with certain requirements, and even sell according to specified prices – the relationship may in a given case be that of an independent contractor. Facts of each case and the authority given by 'principal' to the franchisees matter and are determinative.*
>
> *40. An independent contractor is free from control on the part of his employer, and is only subject to the terms of his contract. But an agent is not completely free from control, and the relationship to the extent of tasks entrusted by the principal to the agent are fiduciary. As contract with an independent agent depends upon the terms of the contract, sometimes an independent contractor looks like an agent from the point of view of the control exercisable over him, but on an overview of the entire relationship the tests specified in clauses (a) to (d) in paragraph 8 may not be satisfied. The distinction is that independent contractors work for themselves, even when they are employed for the purpose of creating contractual relations with the third persons. An independent contractor is not required to render*

accounts of the business, as it belongs to him and not his employer.

41. Thus, the term 'agent' denotes a relationship that is very different from that existing between a master and his servant, or between a principal and principal, or between an employer and his independent contractor. Although servants and independent contractors are parties to relationships in which one person acts for another, and thereby possesses the capacity to involve them in liability, yet the nature of the relationship and the kind of acts in question are sufficiently different to justify the exclusion of servants and independent contractors from the law relating to agency. In other words, the term 'agent' should be restricted to one who has the power of affecting the legal position of his principal by the making of contracts, or the disposition of the principal's property; viz. an independent contractor who may, incidentally, also affect the legal position of his principal in other ways. This can be ascertained by referring to and examining the indicia mentioned in clauses (a) to (d) in paragraph 8 of this judgment. It is in the restricted sense in which the term agent is used in Explanation (i) to Section 194-H of the Act."

6.5 Therefore, in the present facts and circumstances of the case and by respectfully following the decision of the Hon'ble Apex court (Supra), we are of the considered view that the payments made by the assessee towards promotional expenses in the form of various schemes are not liable for TDS u/s.194H of the Act and hence, delete the addition made u/s.194H of the Act to the tune of Rs.3,03,99,796/- by allowing the ground nos. 1 to 6 raised by the assessee.

7. Payments made towards expenditure on meets and events at Rs.2,55,375/-:

7.1 The ld.AR submitted that these are the expenditure spent by the assessee towards promotional activities and various

meeting expenditure of the dealers and the customers. These expenditures are in the nature of travel tickets, food expenses, hotel expenditure, stationery for promotional meets and hence, not liable for TDS u/s. 194C of the Act. In support of expenditure incurred by the assessee towards meeting, events and conventions, the ld.AR submitted the bills, invoices and payment vouchers to establish the nature of expenditure in the form of dinner, banners, meeting expenditure, flex boards, advertisement, posters etc along with ledger account of such expenditure (page no. 176 to 199 of PB). The ld.AR submitted that since these expenditure are spent by the assessee only to conduct the events in promoting the products through dealers and hence not liable for TDS u/s.194C of the Act. Further, the ld.AR stated that these payments are not made to contractors and also the payments are within the threshold limit which is not liable for TDS and hence prayed for deleting the impugned addition confirmed by the ld.CIT(A).

7.2 Per contra, the ld.DR relied on the orders of the lower authorities and prayed for confirming the order of the ld.CIT(A).

7.3 We have heard the rival contentions and gone through the records available and orders of the lower authorities. It is an admitted fact that the assessee is a sole distributor of steel products in the State of Tamilnadu and Pondicherry and has appointed many dealers in the State for promotion of products across the State and to increase the volume of sales, the assessee has conducted various meets with the dealers of the State to announce many of the new schemes entered and also to celebrate the target achievements made by the dealers. The assessee has established that these expenditures are made towards conducting various events by proving the expenditure by providing supporting evidences in the form of invoices along with ledger account. Since, payments are made to various parties and the nature of expenditures are not liable for TDS u/s. 194C of the Act, we are of the considered view that the Assessing Officer and that of the ld.CIT(A) have erred in disallowing the expenditure of Rs.2,55,375/- u/s.40(a)(ia) of the Act and hence, we are deleting the same by allowing the ground nos. 11 to 14 of assessee's appeal.

8. In the result, appeal filed by the assessee is partly allowed.

SP No: 40/Chny/2024:

9. The appeal filed by the assessee in ITA No.: 1937/Chny/2024 is disposed off, the stay application filed along with the appeal becomes academic and hence dismissed.

Order pronounced in the court on 14th November, 2024 at Chennai.

Sd/-	**Sd/-**
(महावीर सिंह)	(एस. आर.रघुनाथा)
(MAHAVIR SINGH)	**(S. R. RAGHUNATHA)**
उपाध्यक्ष/Vice President	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 14th November, 2024
JPV
आदेशकीप्रतिलिपिअग्रेषित/Copy to:
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3.आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF