

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",  
CHANDIGARH**

**HEARING THROUGH: PHYSICAL MODE**

**श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM**

आयकर अपील सं./ ITA NO. 546/Del/2024

निर्धारण वर्ष / Assessment Year : 2022-23

SUNITA RANI 40 MS TEJ RAM HARISH KUMAR ADD. MANDI, SIRSA	बनाम	The DCIT, CPC, Bangaluru, Jurisdictional Assessing Officer, ITO Ward-1, Sirsa Haryana
स्थायी लेखा सं./PAN NO: ABYPR2630L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharamvir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 23/10/2024

उदघोषणा की तारीख/Date of Pronouncement : 23.12.2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT, Appeal, ADDL/JCIT(A)-6, Chennai dt. 08/12/2023 pertaining to Assessment Year 2022-23.

2. In the present appeal, the assessee has raised the following grounds of appeal:

"1. That the Ld. CIT(A) NFAC Delhi has erred in confirming the action of the Ld. DCIT CPC Bangalore not allowing the TDS credited of Rs. 55,977/- as per Rule 37BA of the Income Tax Act, 1961.

2. That the Ld. CIT(A) NFAC Delhi has erred in not considering that the TDS provision of section 194Q are not applicable on the appellant who is merely a "Kacha Arhtiya.

3. That the Ld. CIT(A) NFAC Delhi has erred in not considering the fact that the assessee was mainly acting as commission agent/Kacha Arhtiya and she was earning commission from the parties who has deducted TDS u/s 194Q implying that assessee has not made any sale to the said parties.

4. That the Ld. CIT(A) NFAC Delhi has erred in confirming the action of LD. DCIT CPC Bangalore which is against the facts and circumstances of the case and by not considering our detailed submission filed properly.

5. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally disposed off."

3. During the course of hearing, the Id AR submitted that in the case of the assessee, Id DDIT, CPC Bangalore did not allow the credit of TDS deducted while processing the return of income u/s 143(1) of the Act on the alleged application of Rule 37BA of the Income Tax Rules, 1962 which is as under:

S. No.	Particulars	Amount
1.	Total receipts offered to tax under various heads (including receipts under Schedule EI other than the Agricultural income part) in the return	35,65,164/-
2.	Total Receipts as per Form 26 AS	54,39,634/-
3.	Credit of TDS claimed by the assessee in the return of income	1,62,441/-
4.	TDS Credit as per Rule 37BA: 1/2*3	1,06,464/-
5.	TDS Credit not allowed	55,977/-

4. It was submitted that the assessee is engaged in the business of commission agent of agriculture produce and as per the business model of the assessee, the assessee procures the agriculture produce from the farmers and thereafter, sell the same to various buyers and out of such arrangement, the assessee earns nominal amount of commission which has duly been shown by the assessee in her return of income filed for the AY 2022-23. It was submitted

that the assessee is not the owner of the agriculture produce and hence, the assessee does not sell such goods on her own behalf rather the assessee only acts as a mediator/ agent and for such purpose, the assessee has obtained a registration from the Haryana State Agricultural Market Committee and copy thereof has been placed on record.

5. It was submitted that the assessee thus acts as a 'Kacha Arhtiya' and various farmers bring their agricultural produce to a particular platform of a 'kacha Arhtiya' licensed by local market committee. The 'kacha Arhtiya' only acts as an agent of the farmers and is responsible for farmer's crop display, basic cleaning, sorting, conducting auction, receiving payments on behalf of farmers and then making such payments to farmers and thereby retains only the commission income. As an agent, the 'Kacha Arhtiya' does not trade of his own and his income is only the commission income fixed by the Agriculture Produce Market Commission and this commission is paid by the buyer of the agriculture produce. It was submitted that the commission agent is not the owner of the goods and have no right to sell the goods rather the farmers are the real owners who enjoy the right to sell such goods and receive consideration.

6. It was submitted that the 'Kacha Arhtiya' records only commission income in the books of account but not the actual purchase or sales in his books of account. Hence, only the commission income and the corresponding expenses incurred for earning such commission income are recorded by the 'Kacha Arhtiya' in his books of account. It was submitted that the Income Tax Department has clarified vide circular No. 452 [F. No. 201/3/85-IT(A-II)] dated 17.03.1986 that the turnover of a 'Kacha Arhtiya' will only be the commission earned by the him and not the sales of agriculture produce. It was submitted that the assessee has duly disclosed the commission income earned by her in the Profit & Loss A/c prepared for the year ending 31.03.2022, copy of the same is placed in the paper book.

7. It was submitted that two buyers namely Smt. Saroj Gupta and Shri Anirudh Gupta inadvertently deducted TDS under section 194Q of the Act. It was submitted that the assessee has not sold any produce in her own behalf rather all the sales have been executed by the assessee on behalf of the farmers and the assessee has earned only commission income on such sales. It was further submitted that the TDS has already been deducted by these two buyers under section 194H as well however, given that TDS under section 194Q has been wrongly deducted, the assessee cannot be penalized by denying credit of the same where she has only earned commission income on the transaction so executed on behalf of the farmers. It was further submitted that detailed written submissions were filed before the Ld. CIT(A) and which has not been appreciated by him.

8. It was further submitted that the Ld. CIT(A) has stated that where the assessee claimed to be engaged in the business of commission agent then TDS should have been deducted under section 194J of the Act and not Section 194Q. In this regard, it was submitted that Section 194J is applicable where payment is made for professional or technical services. However in this case the assessee only acted as a commission agent and TDS under section 194H has already been deducted by the buyers and it so happened that while making the payment, the TDS under section 194Q has also been deducted. And since the same has been wrongly deducted the assessee has claimed the same while filing her return of income which has been wrongfully denied to her.

9. Per contra, the Id DR is heard who has relied on the order of the lower authorities. It was submitted that there is nothing on record to demonstrate that the assessee has sold the goods on behalf of the farmers and therefore, in such circumstances, the CPC has rightly restricted the credit of TDS to the extent of receipts offered to tax and which has been duly confirmed by the Id CIT(A).

10. In his rejoinder, the Id AR submitted that given the opportunity, the assessee can demonstrate that she is only acting as the commission agent and has sold goods on behalf of the farmers and where the Bench so decide, the matter may be set-aside to the file of the AO for necessary examination and verification. The Id DR didn't oppose where the matter is set-aside to the file of the AO.

11. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to transactions undertaken by the assessee with Smt. Saroj Gupta and Shri Anirudh Gupta wherein the latter had deducted TDS u/s 194Q of the Act. As per the contention of the Id AR, the said transaction relates to sale of the agriculture produce on behalf of the farmers and as such, the assessee only acted as a commission agent and the TDS has been wrongly deducted u/s 194Q of the Act. It has been submitted that where the TDS has been wrongly deducted, the assessee cannot be penalized by non-grant of TDS credit which she has rightly claimed while filing the return of income wherein the commission income has been duly offered to tax. On the other side, the claim of the Revenue is that since receipts from Smt. Saroj Gupta and Shri Anirudh Gupta have not been reflected as part of revenues and offered to tax, the CPC has rightly restricted the TDS credit. We find that besides the aforesaid contentions and the fact that the TDS has been done by Smt Saroj Gupta and Shri Anirudh Gupta under both section 194Q as well as 194H as evident from Form 26AS, there is not enough material available on record to decide the exact nature of transactions so undertaken and decide the matter judiciously and in the fitness of the things, it would be appropriate that the matter is remanded to the file of the AO as also acknowledged and agreed by both the parties. The matter is accordingly set-aside to the file of the AO to examine the exact nature of transaction undertaken by the assessee with Smt. Saroj Gupta and Shri Anirudh Gupta, the role of the assessee vis-à-vis the

purchaser and seller(s) and determine the claim of credit so made afresh as per law after providing reasonable opportunity to the assessee.

12. The appeal of the assessee is thus allowed for statistical purposes.

Order pronounced in the open Court on 23.12.2024.

Sd/-

**परेश म. जोशी**  
**(PARESH M. JOSHI)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**  
**AG**

Sd/-

**विक्रम सिंह यादव**  
**(VIKRAM SINGH YADAV)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar