

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA Nos.6419, 6420, 6421, 6422, 6423,  
6424 & 6425/M/2024**

**Assessment Years: 2013-14, 2014-15, 2015-16,  
2016-17, 2017-18, 2018-19 & 2019-20**

<b>M/s. CEAT Limited,</b> 463, RPG House, Dr. Annie Besant Road, Worli Mumbai Maharashtra – 400 030 <b>PAN: AAACC1645G</b>	Vs.	<b>Income Tax Officer,</b> OSD TDS Circle 1(1), 411, 4 <sup>th</sup> Floor, Cumballa Hill MTNL Bldg., Pedder Road, Dr. Gopalrao Deshmukh Marg, Mumbai – 400 026
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nishant Thakkar, Ld. A.R. &  
Ms. Jasmin Amalsadwala, Ld. A.R.

Revenue by : Shri Mahesh Pamnani, Ld. Sr. D.R.

Date of Hearing : 05 . 02 .2025

Date of Pronouncement : 28 . 03 . 2025

**O R D E R**

**Per Bench:**

These appeals have been preferred by the Assessee against the orders even dated 16.10.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Ys. 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-20.

2. All these appeals under consideration are based on the identical facts except variation in amounts and having involved identical issue and therefore for the sake of brevity, the same were

heard together and are being disposed of by this composite order by taking into consideration the facts and circumstances and issue involved in ITA No.6419/M/2024 as a lead case and result of the same would be applicable mutatis mutandis, to all the appeals under consideration.

**3.** ITA No.6419/M/2024: In this case, the Assessee has claimed to be engaged in the business of tyre manufacturing and selling and therefore in order to verify whether the Assessee company is properly applying with the provisions contained in chapter (xvii) of the Act, a survey action u/s 133(a)(2a) of the Act was conducted at the premises of the Assessee on dated 05.10.2018, wherein it was found that the Assessee company's sales of tyres are through consignees and forwarding agents (CFAs). As per clause 5 of CFA agreement, the CFA will be eligible for claiming the reimbursement of expenses on actual as fixed expenses for warehouse, rent, storage, furniture, fixtures etc. as incentive and commission on sales on a monthly basis at the specified rate **per kilogram** of sales made per month for local sales and upcountry sales, as case may be. On perusing the TDS ledgers for the payments made to the CFA, it was seen by the Assessing Officer (AO) that the Assessee was deducting TDS @ 2% u/s 194C of the Act, on the fixed expenses paid as incentive, as well as commission paid under nomenclature of "**variable service charges**" on the bills raised by the CFAs. Since the Assessee was paying "commission" to the CFA agents, on the specified rate under the nomenclature of "variable service charges", the TDS should have been deducted @ 5% u/s 194H of the Act. The AO further observed that in the statement recorded u/s 133 of the Act during survey proceedings, Shri Hiren Desai, General Manager, taxation of the Assessee company, was confronted with these facts, who had stated that "as per agreement", the CFA is providing various services such as loading, unloading, storing and delivery of the tyres, accounting and receipt

booking etc.. For providing all these services, the CFA is incurring various expenses. In consideration for all these services, the company is making payment to CFA as fixed expenses and variable expenses. The said services fall under contractual obligation and accordingly the assessee company is deducting TDS u/s 194C of the Act. The classification in the agreement as "commission" is nomenclature given for the remuneration to the CFA for providing contractual services.

**4.** The AO thereafter issued statutory notices, to the Assessee and show caused *"as to why the Assessee should not be treated as deemed to be an Assessee in default within the meaning of section 201(1)/201(1)(a) of the Act, on its failure to deduct the withholding of tax @ 5% under the provision of section 194H of the Act, instead of deduction made @ 2% u/s 194C of the Act, with respect to the following "commission payment" made to CFA agent"*.

<i>Financial Year</i>	<i>Total Commission paid to CFA for OE sales</i>	<i>Total commission paid to CFA for MR sales</i>
2016-17	Rs.5,44,56,532/-	Rs.24,05,66,619/-

**5.** The Assessee vide letters dated 12.10.2018 and 14.12.2018 replied the show cause notice and submitted as under:

*"(i) At the outset it is submitted that the assessee had during the year under consideration entered into Consigning and Forwarding Agreement with various persons across the country. Pursuant the agreement the CFA were required to receive, warehouse, safe store and dispatch the goods to customers and dealers. As a consideration for the services, the assessee would pay its CFAs as payment towards fixed expenses per month and payment of variable expenses on the basis of the Kgs. managed. These services being in the nature of carrying out work on the basis of contracts entered were subjected to TDS u/s 194C- Payment to contractors.*

*In this regard we would now like to distinguish the language as given in Section 194C as compared to other TDS provisions. As*

*per Section 194C, any person making payment to any resident for carrying out work in pursuance of a contract is liable for deduction of tax at source. The relevant extract of section 194C is reproduced for ease of reference 194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to-*

*(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*

*(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein."*

*From the above it is indeed clear that the provisions of section 194C would become applicable in case of payments which are for carrying out work in pursuance of a contract.*

*Now from a careful understanding of the services provided by CFA inter alia relating to receiving, loading & unloading, warehousing, safe storing and dispatching, it can be clearly construed that the appointment of CFAs is necessitated for a smooth and proper distribution of its goods over a particular area. In other words, CFAs are a link between the manufacturer and the consumers. They are a part of sales & distribution network of the manufacturer. In view thereof your goodself would appreciate that the services provided by the CFAs are similar to the services provided by Clearing & Forwarding Agents. This fact is further supported by the agreement entered into between the Assessee & the CFAs. Copy of one of the agreement with a CFA is enclosed and marked as Annexure 'B'. From the perusal of the agreement it becomes once again evident that CFAs acts as the assessee's consigning, storing and forwarding agent for receiving, warehousing, safe storing and dispatching of the goods to all categories of customers/dealers & company's depots in a specified territory. The relevant extract of the agreement is reproduced for your ready reference:*

*"2.1 The CFA shall act as the Company's consigning, storing and forwarding agent in the said territory, for receiving, ware housing, safe storage and dispatch of the goods to all categories of customers/dealers & company's depots in as specified territory as per Schedule - A in line*

*with the policies decided by the Company from time to time."*

*From the above it is certainly evident that the CFA are nothing but the "Clearing & Forwarding agents of the company and are merely acting as a front man of the company.*

*At this point we would now like to draw your goodself attention to Circular No. 715, dated 8/8/1995 wherein the CBDT has clarified that the payments made to Clearing & Forwarding Agents should be subjected to deduction of tax at source u/s 194C. The relevant Extract from the Circular is reproduced as under:*

*"Question 6: Whether payment under a contract for carriage of goods or passengers by any mode of transport would include payment made to a travel agent for purchase of a ticket or payment made to a clearing and forwarding agent for carriage of goods?"*

*Answer: The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction ut source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in section 194C(1). The provision of section 194C shall, however, apply when a plane or a bus or any other mode of transport is chartered by one of the entities mentioned in section 194C of the Act. As regards payments made to clearing and forwarding agent for carriage of goods, the same shall be subjected to tax deduction at source under section 1940 of the Act."*

*Further we would also like to draw your goodself attention to the decision of the Delhi ITAT in the case of Glaxo Smithkline Consumer Healthcare Ltd. V. Income-tax Officer, Ward 49(3), New Delhi (2007) 12 SOT 221 (Delhi) wherein the Hon'ble Delhi Tribunal has categorically held that payments made to agent for services relating to Storage, Dispatch, transportation, loading and unloading of goods is liable for deduction of tax at source u/s 194C."*

**6.** Though the AO considered the reply/submission of the Assessee, however, found the same not acceptable, on the following reasons:

*"6. The submission of the assessee is perused and found not acceptable due to the reasons elaborated here under:*

(6.1). In the agreement entered with CFA by assessee it is clearly mentioned that they will receive two types of payments and separate bills are also raised by the deductee for the fixed expenses incurred and commission charged (Variable service charges) on monthly basis.

(6.2) Commission or brokerage is defined in explanation (i) of Sec 194H for the purpose of that section which is as under:

"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"

(6.3) The services provided by the CFA are in the course of selling of goods of the assessee and falls under the definition of Commission as envisaged in sec 194H of the Act

(a) As per the terms of CFA Agreement entered into, it is clearly mentioned in clause 4,4 of the said agreement that the CFA will raise monthly commission bill for the services provided by them.

(b) As per clause 5 of the CFA agreement the CFA will be eligible for claiming the reimbursement for expenses on actual as scheduled in the "Schedule A" CFA shall also be entitled for a commission on sales on a monthly basis.

(6.4) To cross verify the transaction between assessee and CFA Survey U/s 133A(2A) was carried out on one of the CFA agent of assessee M/s Hoosaini & co. PAN AA AFH0874M. Statement u/s 131 was recorded of Shri Hussain Valjee partner of the firm. He has stated that they receive fixed charges, variable charges and reimbursement of expenses. From the documents obtained from them it is seen that M/s Hoosani Company are submitting following documents to CEAT Ltd on monthly basis.

(i) Monthly CFA Commission Calculation Chart for the Month. Copy of which is enclosed as Annexure to this order. As per this calculation sheet it is found that they have worked out deduction of TDS on commission @ 10%. When he was confronted with this fact he stated that they consider this income as commission but the controlling person of the CEAT Ltd had directed to raise bills mentioning TDS @ 2%. The format for raising the bill is also provided by CEAT.

(ii) Monthly Variable Service charge bill (Commission bill)

(iii) Fixed service charge bill, which are for rent, storage material charge etc.

(a). *M/s Hoosaini Company is recording the receipt from CEAT as Commission income in there book's of account.*

(b) *It is also important to mention here, that upto F.Y 2013-14 M/s CEAT Ltd was deducting TDS u/s 194H on the payments made to the CFA M/s Hoosani company. They had started to deduct TDS U/s 194C from F.Y 2014-15 in spite of the fact that the nature of transaction with CFA remains same.*

(6.5) *The circular No 715 quoted by assessee is also not relevant with the facts of the case as the same is for TDS deduction on payments made to clearing and forwarding agents.*

(6.6) *The decision of Delhi ITAT in the case of Glaxo Smithkline Consumer Healthcare Ltd. V. Income-tax Officer, Ward 49(3), New Delhi (2007) 12 SOT 221 (Delhi) on which assessee has relied was decided on the issue whether the services rendered by CFA falls under professional or technical services and whether TDS should have been deducted U/s 194J of the Act. The ITAT has only held that the services rendered by CFA does not comes under professional or technical services as defined in sec 194J of the Act.*

*Therefore the said decision is not applicable with the facts of the assessee case as the ITAT has not come to the conclusion that the services rendered by CFA does not fall under the definition of commission and brokerage as defined in sec 194H of the Act.*

(6.7) *The CFA is raising two separate monthly bills to assessee. One for the fixed expenses which they have to incur as per terms of agreement for godown, racks, almirah computer printers table chairs and other infrastructure and storage facility etc. The second bill is raised for commission under the nomenclature of variable service charges on the quantity of goods sold during that month on the specified rate per k.g as per the terms of CFA agreement.*

*The fixed charges bill raised by the CFA are for the contractual activity, however the variable service charge bill( Commission) raised by them are for the services rendered and TDS on this payment should have been deducted U/s 194H of the Act.*

(6.8) *In the CBDT circular No 619 dt 04.12.1991 the payment made to consignee/Agent has been classified as commission and TDS has to be deducted U/s 194H of the Act.*

*Agra ITAT in the case of Pee Cee Cosma Sope Ltd ITA No. 124/Agra/2013 reported in 35 Taxmann.com 487 has also held that payment made to consignment agent for services are in nature of commission.*

*Various courts in their ruling has held that if there is relationship Principal and Agent between manufacturer and consignee, any payment made to agent for services provided will be in the nature of commission and TDS is deductible U/s 194H of the Act.”*

**7.** The AO on the aforesaid reasons, ultimately by holding “*that variable service charge bill (commission) raised by the CFA for the services rendered and TDS on this payment, should have been deducted u/s 194H of the Act*”, ultimately treated the Assessee in default within the meaning of section 201(1) of the Act and raised the demand of Rs.1,25,00,396/- .

**8.** The Assessee, being aggrieved, challenged the said demand before the Ld. Commissioner and raised various issues/grounds.

**9.** The Ld. Commissioner considering the peculiar facts and circumstances in totality, ultimately confirmed the decision of the AO in raising the demand of Rs.1,25,00,396/- by the AO u/s 201(1) & 201(1a) of the Act, by holding that variable payment being made by the Assessee to the CFAs as commission income, is liable to TDS @ 5% u/s 194H as against @ 2% u/s 194C as being done by the Assessee. For brevity and ready reference, the analyses made and conclusion drawn by the Ld. Commissioner are reproduced as under:

**“7. Decision**

*7.1 The findings of the AO in the order, the detailed submission of the appellant and the various case laws relied upon by the appellant have been perused and are being considered. The main issue of dispute is whether the nature of variable payment done to the CFAs by the appellant is Commission or contractual payment. While the AO is of the opinion that the payment is nothing but commission and hence liable for tax deduction U/s 194H@%, the appellant is of the firm view that the payment is a contractual payment liable for TDS U/s 194C @ 2%.*

*7.2 Before deciding on the nature of the payment it is of utmost importance to note that in the instant case the payment made by the appellant are not net of taxes, i.e. the tax liability is ultimately*

*on the CFAs. The appellant is merely deducting taxes on behalf of the Government of India and is fulfilling the delegated responsibility of tax collection. The tax liability on the payment and the corresponding TDS is ultimately going to be accounted for by the CFAs in their respective return of income.*

*7.3 Before coming to the facts of the instant case it is important to discuss the relevance of the various case laws that the appellant has filed in support of its claim. It is stated once and for all that none of these case laws are rejected forthwith in arriving at my decision. However, this is also a matter of fact that each of these case 1071 laws are specific to the agreement in dispute before them and though can be useful in deciding the nature of a particular clause in an agreement, by no means can it be said that any of the case law shall apply in toto to the instant agreement in dispute which is between the appellant and the CFAs. To put it aptly, none of these decisions have analysed the instant agreement clause by clause and can apply only partly to some of the clauses in the agreement. Thus, none of the case law cited by the appellant lay down any "Ratio Decidendi" that I can adopt and decide the matter before me.*

*7.4 In order to decide the issue at hand, it is essential to understand the difference between a contractor and an agent in simple terms and only then it shall be relevant to examine the clauses in the agreement of the appellant with the CFAs. In my considered view, the distinction between a Contractor and Agent lies in the extent of control that the Principal exercises in the agreement. The general test for agency is one that considers control and mutual consent by a principal. The presence of an agency relationship is tested based on the degree of control and level of consent given by a Principal for the Agent to act on the Principal's behalf or under the Principal's control. An independent Contractor, by contrast, is not controlled by the Principal and they have a different relationship. In order for someone to be an Agent, there must be actions that show the requisite control to make someone an Agent. Without enough control, they will instead be categorized as an independent Contractor. However, it is extraordinarily difficult to know exactly how much control would make a meaningful difference. In my view therefore, the instant dispute will have to be analysed with this very important fact in mind that the tax liability in the instant agreement was never on the appellant.*

*7.5 Coming to the instant agreement in terms of nature of roles and responsibilities of the CFAs, following clauses are worth mentioning:*

*2.1 The CFA shall act as the Company's consigning, forwarding and storing agent in the said territory for receiving, warehousing, safe storage and dispatch of goods*

*to all categories of customers/dealers & company's depots in specified territory as per schedule A in line with the policies decided by the company from time to time.*

*2.2 The CFA shall act only as an agent of the company for the purposes of the above and shall deal only with the Goods of the company and shall not transgress his responsibilities beyond than what has been mentioned in this agreement and/or shall not act/deal either as agent or in any other capacity for any other party in respect of the said goods or derivatives thereof, which may in any manner affect the interest of the company adversely. The CFA also undertakes that it shall deal only with the goods of the company from the same godown and shall not act either an agent or in any other capacity for any other product or material of other parties from the same godown and without prior permission of the Company.*

*2.3 The CFA shall prominently display sign board of the company, the dimensions of which shall be restricted to 10"X4" in front of the godown in which the goods of the company are stored in such manner as would be easily seen by the public at large and will also display notice board inside the godown at a prominent place in terms as follows:*

*Various other clauses such as 2.7, 2.8, 2.9, 2.10 and 2.11 lay down the way on which the CFA is expected to maintain the infrastructure of its premise.7.6 The above are only some of the representative clauses which show the extent of control that the appellant exercises over the CFAs. In fact there are various other clauses in the agreement that establish that the appellant shall have complete control over the decision making of the CFAs. Thus, while the appellant may rely on various terms of the agreement to argue that the CFAs are in the nature of a contractor, the fact that emerges from plain reading of the agreement is that the CFAs have very little independence and hence the element of a Principal to Principal agreement as in the case of a contractor is completely missing.*

*7.6 Having discussed the operational aspect of the CFA agreement it would also be relevant to come to the financial terms. Even if the fact that the appellant itself has categorised the payments as "Commission" in clause 5 is ignored, the following payment terms of the appellant to the CFA is worth reproducing:*

*Payment for the services:*

*In consideration of the services rendered by the CFA, the Company shall pay the CFA:*

*1. Fixed expenses of Rs. 5,45,455/- per month as incentive to performance*

*Variable Expense*

*1. Local Sales @ Rs.1.70/- per KG of local sale*

*2. Upcountry @ Rs. 2.55/- per KG of upcountry*

*The payment terms too therefore point out towards a variable component based on the quantity of sale which is nothing but what commission normally is.*

*7.7 Having analysed the clauses of the agreement with respect to the operational aspect and also the financial methodology, I now proceed to take up the argument of the appellant one by one.*

*(i) With respect to the agreement of the appellant with the CFAs, the appellant has vehemently argued that there is no Principal to Agent relationship and hence the payment cannot be in the form of Agency commission. However, in the preceding paras, it has already been elaborated that there is no component of Principal-to-Principal agreement as is the case with a Contractor and in fact the nature of control exercised by the appellant over the CFAs point towards an agency relationship.*

*(ii) The appellant has objected to the AO not providing the copy of the statement given by the CFA ie, M/s Hoosaini & Co in which the appellant has stated that they themselves were treating the payment received from the appellant as Commission in their books of accounts. The appellant has stated that the AO did not give any opportunity to cross examine the third party witness and hence there has been a violation of principles of natural justice. In this connection it may be pointed out that the CFAs treating the receipt as commission in their own books of accounts is a matter of record and the mere fact of cross examination by the appellant is not going to change the record. The appellant may be aggrieved to the extent of statement given by the CFA that they are raising bills indicating TDS @2% at the directions of the appellant. However this statement is not really relevant in deciding the nature of payment done by the appellant to the CFAs especially when the facts are apparent from the CFA agreement and the books of accounts of the CFA. Thus, there is no merit in this argument of the appellant.*

*(iii) The appellant's reliance on Circular No 715 in deducting taxes @ 2% is also of no assistance to the appellant as the same has already been rejected by the AO holding that it applies specifically to "Clearing & Forwarding Agent" which is a clear-cut*

*market terminology and not an implied one as in the case of the appellant.*

*(iv) The appellant has further argued that the AO was not correct in categorising the fixed payment as Contractual payment but the variable payment as commission and hence taking two different stand for these payments. In arguing so, it relies upon the CBDT Circular No 720 dated 30th August 1995 which states that TDS from a particular payment has to be made only under one section. This argument of the appellant also fails since in the instant case the appellant itself has categorised the payment as Fixed and Variable and separate bills and payments are made. Thus. there is no infirmity in having a differential TDS rate on these two payments.*

*7.8 Having discussed the clauses of the agreement and the arguments of the appellant, I now proceed to decide the issue at hand. Following considerations are paramount in taking this decision:*

*(i) The fact as to whether a particular agreement is in the nature of Contract with Principal to Principal relationship or in the nature of an agency with Principal to Agent relationship is dependent upon independent clauses of the agreement under discussion. Thus, no case law shall prima facie apply in toto to the agreement and the clauses of the agreement shall only decide the nature of relationship between the appellant and the CFAs. In the instant case as per my considered submission, the clauses of the CFA agreement do not indicate an independent agreement as in the case of a Contractor.*

*(ii) It is of utmost importance to consider that the tax liability in this transaction was never on the appellant and the appellant was only doing its sovereign duty of delegated tax collection. The purpose of TDS is to ensure that there is no leakage of tax by deducting it at the source itself. This is extremely relevant in a situation wherein the recipient of the sum/income are a large number of entities of different credibility. In the instant case, there are multitude of CFAs, each of different credit worthiness and hence it was the duty of the appellant to ensure that tax as per rules is deducted at the source itself so that there is no leakage of tax. It is further surprising that the appellant was earlier deducting taxes on the same payment @ 5% for years prior to AY 2013-14 and thereafter changed its position to treat these payments as contractual payment liable for reduced rate of TDS. The appellant did not also approach the department at any point of time to assist it in categorising the nature of payment.*

*(iii) The CFAs were accounting for the variable payment received from the appellant as Commission income in their books of*

*accounts and this also indicates that the normal trade practice was to treat this receipt as Commission.*

*For reasons as detailed above, I am therefore of the considered view that the AO has correctly categorised the variable payment being done by the appellant to the CFAs as Commission income liable to TDS @ 5% as against @2% as being done by the appellant. The demand of Rs. 1,25,00,396/- raised by the AO U/s 201(1) and 201(1A) is therefore confirmed. The grounds of appeal of the appellant are dismissed.*

*1. In the result the appeal is dismissed.”*

**10.** The Assessee, being aggrieved, challenged the impugned order affirming the demand of Rs.1,25,00,396/- raised by AO, treating the “variable amount” paid to the CFAs as “commission” income liable to TDS @ 5% u/s 194H of the Act, as against @ 2% as being deducted by the Assessee u/s 194C of the Act.

**11.** The Assessee has claimed that it had entered into consignee and forwarding agreement/contracts with various persons across the country, in order to load, unload, warehouse, safe storage and dispatch of the goods to customers and dealers. As a consideration for the services provided by the CFA, the Assessee made payments as reimbursement of the expenses on actual basis as fixed expenses per month and applicable expenses on the basis of per kilograms managed. Since the said payments were made on the basis of contracts entered into by the Assessee and therefore the same would fall under the ambit of “contractual services” subject to TDS u/s 194C of the Act and most importantly in the nature of “clearing and forwarding services” as the Assessee had been deducting tax at source u/s 194C of the Act, on the total payments made to CFAs as per the contract.

**12.** The Assessee further claimed that as the actual nature of services as provided by the CFAs to the Assessee, were/are in fact in the nature of “**clearing and forwarding services**” and therefore the total payments i.e. fixed expenses for variable

expenses should be subjected to TDS u/s 194C of the Act, but not u/s 194H of the Act, as determined by the authorities below.

**13.** Though the AO had relied on the statement of one of the CFAs namely M/s. Hoosaini & Co. recorded during survey u/s 133A(2A) of the Act, however, failed to provide any opportunity to cross examine and controvert such third party statement, as against the rule of principle of natural justice.

**14.** The Assessee further submitted that CFA is required to act as a company's consignee, storing and forwarding agent in the territory for receiving, warehousing, safe storage and dispatch of the goods to all categories of customers/dealers and company's depots in a specified territory as per **schedule -A** in line with the policies decided by the company from time to time. The CFA shall act only as an agent of the company for the purposes as above and shall deal only with the goods of the company and shall not transgress his responsibility beyond with, what has been mentioned in this agreement and/or shall not act/deal either as an agent or in any other capacity for in other party in respect of the said goods or derivative, so thereof which may in any manner effect the interest of the company adversely. Further, CFA is responsible to make required transportation arrangement expeditiously, entirely at its own cost. CFA will be eligible for claiming the reimbursement of expenses, on actual as scheduled in the schedule (a) on a monthly basis. CFA shall also be entitled for a commission on sales on a monthly basis. It is further specified in the agreement that although the goods shall be stored in the godown in the custody of the CFA, but the said goods shall always be and remain the property of the company and CFA will be a trustee thereof, until the same are sold and delivered to the parties/dealers concerned. CFA shall have no right whatsoever to sale, transfer, pledge, hypothecate or otherwise dispose of the same or create any other encumbrance thereon.

**15.** The Assessee further claimed that the Assessee and the CFA are not principal and agent as:

- (1) *The CFA has no authority to contract with third party or bind Assessee*
- (2) *CFA holds goods as a trustee*
- (3) *CFA has no authority to sell the goods.*
- (4) *CFA has no authority to discharge Assessee's predecessor*
- (5) *Consideration paid on the basis of kilogram of weight handled and not on the sale price.*
- (6) *CFA's duty is to store/warehousing and forwarding the goods of Assessee as per Assessee's policy and as per direction of the Assessee and therefore the provision of section 194H would not be applicable.*

**16.** The Assessee further submitted that in the agency, agent must have ability to exercise discretion/judgment – which is completely absent in the present case, as the CFA is duty bound to do things as directed by the Assessee. For consideration of any person to be an agent, such a person must have the authority to enter into contracts on behalf of the principal, power to alter the principal's relationship with a third party. In this case, CFA has no power/authority to bind the principal.

**17.** Further, commission u/s 194H means a reward for sale or for negotiating a business transaction as held in the case of Kotak Securities Ltd. vs. DCIT -18 taxmann.com 48 (Mumbai). Mere use of word "**commission**" does not create agency, as held in various cases including in the cases of (i) State of Madras vs. Jayalakshmi Mills – AIR 1959 AP 352, (ii) Balthazar & Son vs. Abowath-AIR 1919 PC 166 (iii) Bharti Cellular Ltd. vs. ACIT 160 taxman.com 12(SC).

**18.** Further, consideration amount cannot be split, as circular no.720 dated 30.08.1995 specified that TDS must be deducted under one section only.

**19.** The Assessee further claimed that warehousing and transportation services provided by CFA are covered u/s 194C of the Act, as per circular no.715 dated 08.08.1995 and as per judgments of the Hon'ble High Court and the Tribunal in the case of CIT vs. Hindustan Lever Ltd. – 29 taxmann.com 313 (Del. – HC) and Glaxo Smithkline Consumer Healthcare Ltd. V. Income-tax Officer, Ward 49(3), New Delhi (2007) 12 SOT 221 (Del. ITAT).

**20.** On the contrary, the Ld. D.R. refuted the claim of the Assessee by submitting as under:

*“That in earlier assessment years, the Assessee himself was deducting the TDS u/s 194 of the Act. Even otherwise during the survey proceedings, M/s. Hossaini Company one of the CFAs, has admitted that up to A.Y. 2013-14 the Assessee was deducting TDS u/s 194 of the Act, however, thereafter from A.Y. 2014-15 onwards they started deducting the TDS u/s 194C of the Act, in spite of the fact that the nature of transaction with the CFA remains the same. The Assessee and CFA are principal and agent, as the agent is to do the work as per the wisdom of the principal and for the welfare of the principal and as per terms and conditions set out in the memorandum of association/contract and therefore the Assessee cannot skip the liability, as determined by the AO, as affirmed by the Ld. Commissioner”.*

**21. We have heard the parties and perused the material available on record.** The Assessee has claimed to be engaged in the business of manufacturing of automobile, tyres, tubes etc. and therefore in order to handle its supply chain had entered into contracts with various persons for providing last-mile storage/warehousing and dispatching/forwarding services. The Assessee consequently made the contractual agreements with the forwarding agents/ warehousing owners including the consigning and forwarding agreement (CFA) dated 08.05.2018 entered into between the Assessee and M/s. Hoosaini Company, a partnership firm. According to the Assessee, the CFA has no authority to contract with third party and cannot alter the Assessee's relations with third parties. CFA holds goods, as a trustee and has no

authority to sell the goods and is also to discharge the Assessee's purchasers. CFAs duty is storing/warehousing and forwarding the goods to the customers as per instruction of the Assessee. CFA is also bound by confidentiality and to arrange the godowns, as per Assessee's specifications and to install the infrastructure as per Assessee. CFA has no lien over sale proceeds as well as authority to admit/commit to any defect in or claims with respect to the goods. The Assessee further claimed that for considering the arrangement as agency, agent must have some ability/empowerment to exercise discretion/judgment, which is completely missing in the present case. As the CFA is duty bound to act, as per the direction of the Assessee and therefore mere use of word "commission" does not create agency, specifically in view of the judgments passed by the Hon'ble Apex Court in the case of Bharti Cellular Ltd. vs. ACIT 160 taxman.com 12(SC) and by the Hon'ble Madras High Court in the case of State of Madras vs. Jayalakshmi Mills - AIR 1959 AP 352. The Assessee further submitted that anyone to be an agent, such person must have the authority to enter into the contracts on behalf of the principal and authority to bind principal's relationship with a third party, which in the instant case, CFA has no power to bind the principal whatsoever. Even otherwise "commission" u/s 194H of the Act, means a reward for sale or for negotiating a business transaction.

**22.** Whereas the Ld. D.R. has refuted such claim of the Assessee by submitting that in earlier assessment years, the Assessee himself was deducting the TDS u/s 194 of the Act and during the survey proceedings, M/s. Hossaini Company one of the CFAs, has admitted that up to A.Y. 2013-14 the Assessee was deducting TDS u/s 194 of the Act, however, thereafter from A.Y. 2014-15 onwards they started deducting the TDS u/s 194C of the Act, in spite of the fact that the nature of transaction with the CFA remains the same. The Assessee and CFA are principal and agent, as the agent is to do

the work as per the wisdom of the principal and for the welfare of the principal and as per terms and conditions set out in the memorandum of association/contract and therefore the Assessee cannot skip the liability, as determined by the AO and as affirmed by the Ld. Commissioner.

**23.** We have given thoughtful considerations to the documents available on record and contentions raised by the parties. From the aforesaid contentions of the Assessee, it is clear that the CFA was appointed as an agent for storing/warehousing and dispatching/forwarding of the goods of the Assessee, may be with the limited directions/liability. As per agreement, the consideration was/is supposed to be payable in following two components:

- (i) *fixed charges of the expenses of Rs.5,45,455/- per month as incentive subject to performance.*
- (ii) *Commission (variable expenses) @ 1.70 per KG on local sales and Rs.2.55 per KG of upcountry sale.*

**24.** The Assessee in the earlier assessment years upto AY:2013-14, was deducting the TDS on the payments made to the CFAs, u/s 194H of the Act @ 5%, however, subsequently the Assessee from A.Y. 2014-15 onwards started deducting the TDS on both of the said charges/expenses u/s 194C of the Act. The Revenue Department has accepted the fixed expenses subjected to TDS u/s 194C of the Act, hence, the same is not in dispute.

**25.** However, with regard to the variable expenses, both the authorities below considered the agreement entered into by the Assessee with CFA, wherefrom it appears that the Assessee is also paying commission charges (variable service charges) on monthly basis. As the commission or brokerage is defined in explanation (i) of section 194H of the Act, which reads as under:

*“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 or in relation to any transaction relating to any asset, value article or thing, not being securities.”*

And therefore the Authorities below, by considering the terms and conditions of the CFA agreement, wherein in clause 4.4, the Assessee and the CFA have agreed that the CFA will raise monthly **commission** bill for the services provided by it. Further, as per clause (v) of the CFA Agreement, the CFA will be eligible for claiming the reimbursement for expenses on actual basis as scheduled in the “schedule A”. Further CFA shall also be entitled for a commission on sales, on a monthly basis and therefore the services provided by the CFA are in the course of selling of the goods of the Assessee and falls under the definition of commission, as envisaged in section 194H of the Act.

**26.** The AO in order to cross verify the transactions between the Assessee and the CFA, had also carried out the survey u/s 133A(2a) of the Act, on M/s. Hoosaini Company {one of the CFA agent of the Assessee} and recorded the statement of Shri Hussain Valjee, partner of the firm as well, who in his statement has stated that they received fixed charges, variable charges and reimbursement of expenses. Shri Hussain also submitted monthly CFA commission calculation chart, wherefrom it was found by the AO that they have worked out deduction of TDS on commission @ 10%. When Shri Hussain Valjee was confronted with this fact, he stated that they considered this income as commission but the controlling person of CEAT Ltd. had directed to raise bills mentioning TDS @ 2%. The format for raising the bill, is also provided by M/s. CEAT Ltd. The AO further observed that M/s. Hoosaini Company, is recording the receipt from CEAT Ltd. as **commission** income in its books of

account and it is also important to mention here that up to F.Y. 2013-14 M/s. CEAT Ltd. was deducting the TDS u/s 194H of the Act on the payments made to CFA M/s. Hoosaini Company. However, from F.Y. 2014-15 onwards, they have started to deduct TDS u/s 194C of the Act, in spite of the fact that nature of the transaction with CFA remains same.

**27.** Admittedly, the AO while relying on the statement of Shri Hussain Valjee, partner of M/s. Hoosaini Company, has not given any opportunity to the Assessee to contradict the statement and/or cross examine such person and therefore we have to examine the facts and circumstances of the case independently “*as to whether the TDS on variable expenses is liable to be deducted u/s 194C of the Act or u/s 194H of the Act*”. Let us peruse the provisions of section 194C & section 194H of the Act, which read as under:

**“194C.** (1) *Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—*

- (i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*
- (ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*

*of such sum as income-tax on income comprised therein.*

*(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.*

*(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—*

- (i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or*
- (ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.*

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds one lakh rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

*Explanation.*—For the purposes of this section,—

(i) "specified person" shall mean,—

- (a) the Central Government or any State Government; or
- (b) any local authority; or
- (c) any corporation established by or under a Central, State or Provincial Act; or
- (d) any company; or
- (e) any co-operative society; or
- (f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or
- (g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or
- (h) any trust; or
- (i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or
- (j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or
- (k) any firm; or
- (l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—

- (A) does not fall under any of the preceding sub-clauses;  
and
- (B) has total sales, gross receipts or turnover from business or profession carried on by him exceeding one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;
- (ii) "goods carriage" shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE;
- (iii) "contract" shall include sub-contract;
- (iv) "work" shall include—
- (a) advertising;
  - (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
  - (c) carriage of goods or passengers by any mode of transport other than by railways;
  - (d) catering;
  - (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A,
- 89]but does not include—
- (A) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer or associate of such customer; or
  - (B) any sum referred to in sub-section (1) of section 194J.]”

**“194H.** 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 92[two] per cent :

*Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees :*

*Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession*

*carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:*

*Provided also that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.*

*Explanation.—For the purposes of this section,—*

- (i) "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;*
- (ii) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;*
- (iii) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;*
- (iv) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."*

**28.** Section 194C of the Act pertains to payments to contractors for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person. Further, in the provisions of section 194C of the Act "**work**" is defined as under:

"Work shall include:

- (a) ...
- (b) ....
- (c) carriage of goods or passengers by any mode of transport other than by railways;**
- (d) .....
- (e) .....

**29.** Whereas section 194H, deals with the payment on account of **“commission and brokerage”**.

**30.** The Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Hindustan Lever Ltd. (2013) 29 taxmann.com 313 (Delhi) also dealt with an identical issue, wherein the Assessee was manufacturing consumer goods such as detergent, soaps etc. and therefore it hires godowns on rent and also engaged **C & F** agents for various purposes. The then Assessee was deducting tax @ 2.2% u/s **194C** of the Act from the amounts paid to C & F agents, however, the AO was of the opinion that the TDS ought to have deducted tax @ 22% u/s 194I of the Act, because they contained warehousing charges. Therefore, the AO treated the Assessee in default u/s 201(1) of the Act and made consequential demand u/s 201(1a) of the Act. Matter went up to the then CIT(A) and Tribunal, who vide their respective orders allowed the claim of the Assessee in deducting the tax at source on the payments made to the C&F agent **u/s 194C of the Act**. Thereafter, the matter travelled to Hon'ble Delhi High Court. The Hon'ble High Court ultimately affirmed the decision of the then Ld. CIT(A) and the Tribunal by holding that TDS is deductible u/s 194C of the Act, in relation to warehousing charges paid to **clearing & forwarding agents**.

**31.** We further observe that Hon'ble Co-ordinate Bench of the Tribunal in the case of Glaxo Smithkline Consumer Healthcare Ltd. V. Income-tax Officer, Ward 49(3), New Delhi (2007) 12 SOT 221 (Delhi) (13.10.06) [ITA No.551 to 554 (Del.) of 2004 decided on 13.10.2006], also dealt with the identical issue wherein the Assessee had entered into clearing and forwarding agency agreement with various persons and made the payments to the clearing and forwarding agents and deducted the tax at source u/s 194C of the Act for a consolidated set of services including receipt

and dispatching of goods, storing the goods, keeping accounts/records of the same, ensuring the supply of the goods, complying with the formalities for effecting receipt and dispatch of goods etc. On the contrary, the AO held the services rendered by the C & F agents, in the nature of managerial services and therefore held that tax should have been deducted on such payments u/s 194J of the Act and consequently treated the Assessee as an Assessee in default for short deduction of tax at source and accordingly computed the tax payable u/s 201(1) of the Act. The decision of the AO got affirmed by the then Ld. CIT(A) and thereafter the matter went up to the Hon'ble Tribunal.

The Hon'ble Tribunal considering the relevant provisions of law as well as CBDT circular no.720 dated 30.08.1995, which makes it clear that payment made by the Assessee to the C&F agents, was for the services predominantly for "carrying out work" *inter-alia* relating to storage, dispatch, transportation, loading and unloading of goods etc., ultimately held that the Assessee has rightly deducted tax at source u/s 194C of the Act, by observing and holding as under:

*"3. We have considered the rival contentions carefully gone through the orders of the authorities below as well as provisions of the law contained under [Sections 194C](#) and [194J](#) of the Income Tax Act, 1961. **In the instant case, from the record we found that the assessee had entered into clearing and forwarding agency agreements with various persons. On the payments made to the Clearing and Forwarding Agents, the assessee deducted tax at source under [Section 194C](#) of the Act. The payment made by the assessee to the C&F Agents was for a consolidated set of services, The services included receipt and despatch of goods, storing the goods, keeping accounts/ records of the same, ensuring the safety of the goods, complying with formalities for effecting receipt and despatch of goods, etc. The object of the agreements was to ensure handling and delivery of the goods as per the directions of the assessee. Since the services involved carrying out of "work" within the meaning of the said term in [Section 194C](#) of the Act, the assessee, therefore, correctly deducted tax at source under***

**the said section out of the payments made to C&F Agents.** The assessing officer held that the services rendered by the C&F Agents were in the nature of managerial services and, therefore, tax should have been deducted on such payments under [Section 194J](#) of the Act. The assessing officer, thus, treated the assessee as an assessee in default for short deduction of tax at source and accordingly computed tax payable under [Section 201\(l\)](#) of the Act. Action of the assessing officer was confirmed by the Commissioner (Appeals).

4. We have carefully gone through the agreement entered into by the assessee with C&F Agents and perused the terms relating to services to be rendered by C&F Agents. We found that the C&F Agents was required to store, dispose, deliver or redeliver goods as may be determined and notified to such C&F Agents by the assessee. The C&F Agents was required to store the goods by the assessee with all care, prudence and responsibility so that such goods are free from risks as theft, pilferage and damages. He shall have full responsibility in respect of clearing consignment, loading/ unloading, carriage, cartage to and for the warehouse and godown of the agents, staking or storing. He shall put such mark or marks in the warehouse to distinguish the goods of the assessee from the goods that such agents may receive from any other person. He shall indemnify the assessee against any loss in respect of the goods in its custody. Furthermore, the C&F Agents undertake to deliver the goods or consignment to such persons or parties as nominated by the assessee, maintain and render proper account of goods or consignments received, stored, and delivered periodically and submit such statement to the assessee from time to time.

5. We also found that C&F Agents was liable for all damages, pilferage and other losses incurred due to negligence, etc., and undertake to pay on demand in writing made by the assessee without protest the market value of the goods entrusted to such agents. The goods of the assessee was to be received and held by the C&F Agents as bailee/trustee, for and on behalf of the assessee. The agreement entitled the agents for reimbursement of all approved expenses incurred on behalf of the assessee.

6. Thus, it is crystal clear from the terms of the agreement that payment was made by the assessee to the C&F Agents, was for consolidated set of services which have been broadly described above. The main object of the agreement was to ensure correct handling and delivery of goods as per the terms of the assessee. We found that as per the nature of services rendered, the same are in pari materia to the services as contemplated under [Section 194C](#), and the same was not for any professional or technical services as mentioned under [Section 194J](#) of the Act. As per [Section 194J\(I\)](#) of the Act, any person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a

resident any sum by way of (a) fee for professional services, or (b) fees for technical services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount of equal to five per cent of such sum as income-tax on income comprised therein. Explanation (a) and (b) to [Section 194J](#) of the Act defines "professional services" and "fees for technical services" respectively. The same reads as under:

*Explanation-for the purposes of this section:*

(a) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural professional or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of [Section 44AA](#) or of this section;

(b) "fees for technical services" shall have the same meaning as Explanation 2 to Clause (vii) of Sub-section (1) of [Section 9](#).

Explanation 2 to [Section 9\(1\)\(vii\)](#) of the Act "fees for technical services" to mean any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provisions of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

7. Thus it is crystal clear from the provisions of [Section 194J](#) that services of the agents are neither professional services nor technical services. Such services are also clearly not in the nature of technical, consultancy or managerial services, therefore, tax in respect of these services are not to be deductible under [Section 194J](#) of the Act. C.B.D.T. in its Circular No. 720 dated 30-8-1995 had also provided that various provisions of Chapter XVII relating to deduction of tax at sources are mutually exclusive and that Chapter XVII deals with a particular kind of payment to the exclusion of all other sections in this Chapter. Thus, any payment of any sum shall be liable for deduction of tax only under one section, therefore, payment is also liable for tax deduction only under one section, as warranted by the nature of services stipulated therein. **Combined reading of provisions of [Sections 194C](#) and [194J](#) vis-a-vis C.B.D.T. Circular No. 720 makes it abundantly clear that in the instant case payment made by the assessee to the C&F Agents, was for the services which was predominantly for "carrying out work", inter alia, relating to storage despatch, transportation, loading and unloading of goods, etc. Thus,**

***the assessee has rightly deducted tax at source under Section 194C of the Act.***

*8. In view of the above discussion, we are inclined to agree with the learned AR that assessee was not in default for deduction of tax as per provisions of Section 194C at the rate of 2 per cent and that lower authorities were not justified for treating the services rendered to the assessee as falling under Section 194J of the Act and thereby liable for deduction of tax at 5%.”*

**32.** We further observe that the Hon'ble Co-ordinate Bench of the Tribunal at Agra in the case of Pee Cee Cosma Sope Ltd. vs. Joint CIT, Range-4, Agra (2013) 35 taxmann.com 487 (Agra-Trib.) (30.04.2013) (ITA No.54 & 55/Agr/2023 decided on 30.04.2013) also dealt with an issue, wherein the Assessee company was engaged in the business of manufacturing and trading of laundry soap and washing powder, detergent cake etc. and has paid certain amounts to the consignees to whom they have sold their goods and claimed the said amount as reimbursement of expense incurred. However, the AO opined that the case of the Assessee was not of reimbursement of actual expenses incurred by the consignees but a fixed percentage had been paid irrespective of the actual expenses incurred by them. Therefore, the Assessee was liable to deduct the tax at source as per the provision of section 194H of the Act, since the Assessee has failed to do so and therefore the AO made an addition of Rs.28,14,174/- by invoking the provision of section 40(a)(ia) of the Act. The said addition made by the AO, subsequently got affirmed by the then Ld. CIT(A) and therefore the matter travelled up to the Tribunal.

The Hon'ble Tribunal by considering the facts and circumstances and the issue whether the expenditures incurred by the Assessee were in nature of commission or reimbursement of expenditure, ultimately, set aside the decision of the Revenue in holding/deducting the tax at source u/s 194H of the Act and consequently deleted the addition u/s 40(a)(ia) of the Act, by observing and holding as under:

“3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading of laundry soap and washing power, detergent cake etc. During the course of assessment proceedings, the A.O. noticed that the assessee company has paid certain amounts to the consignees to whom they have sold their goods. These amounts were claimed as reimbursement of expenses incurred by them. However, the A.O. noted that the case of the assessee was not reimbursement of actual expenses incurred by consignees but a fixed percentage was paid irrespective of the actual expenses incurred by them. Therefore, as per the A.O. the assessee was liable to deduct tax at source as per the provisions of section 194H of the Act. Since the assessee was liable to deduct tax at source and has failed to do so, the A.O. made an addition of Rs.28,14,174/- by invoking the provisions of section 40(a)(ia) of the Act.

4. The addition made by the A.O. has been confirmed by the CIT(A) as under:- (Paragraph no.5, page nos.7 & 8)

“5. I have carefully considered the assessment order as well as the written submission of the appellant company. I find that in the Assessment Year 2007-08, an identical issue was adjudicated upon by the CIT(A)-II, Agra wherein the following decisions has been given.

“I have analyzed the matter and find that after going through the submissions made by the Id. AR it is abundantly clear that the expenses reimbursed have no co-relation with the expenses incurred by the consignee agents. This position is clear from the submissions made wherein it has been stated that on perusal of the copy of account and of the details of the expenses incurred by them on sales made on behalf of the assessee company it will be seen that the expenses incurred by them are much more than the expenses reimbursed to them at fixed cost rate structure. Expenses at the cost rate are reimbursed to the consignee agent only to have control over the expenses. Therefore, I hold that the claim of the appellant of reimbursement of expenses as it is not linked to that actual expenses is nothing but commissions as it is linked to sale made by the consignee agents. Therefore the appellant was liable to deduct tax at source on these payment which it failed to do. The AO has rightly applied the provisions of section 40a(ia) while making that disallowance. The grounds are dismissed.”

The facts are identical to the facts of this case for the year under consideration. I am in agreement with the views of my predecessor and accordingly the addition made by the AO is confirmed and grounds of appeal 2 to 5 are dismissed.”

5. We have heard the learned Representatives of the parties and records perused. The issue under consideration whether the impugned expenditures are in nature of commission or reimbursement of expenditures. To understand nature of transaction first of all we have to see dictionary meaning of “Commission”. The related meaning as per different dictionaries are as under:-

i) As per THE LAW LEXICON

*Commission Agent : One who sales or buys goods for another and receives by way of remuneration a commission or percentage upon the amount involved in each transaction.*

ii) As per OXFORD DICTIONARY

*Payment to an agent for selling goods or services.*

iii) By FARLEX DICTIONARY

*A fee paid based on a percentage of the sale made by an employee or agent, as distinguished from regular payments of wages or salary.*

iv) As per WEBSTER'S DICTIONARY

*The fee given an agent or sales person for his or her services.*

v) As per Dictionary of CULTUIRAL LITERACY ECNOMICS

*A fee paid to a broker or other financial agents for negotiating a sale. The fee is based on percentage of sale price.*

5.1 In the light of above dictionary meaning, if we see the facts of the case under consideration, we notice that the assessee claimed Rs.28,14,174/- as revenue expenses on consignment sales in profit and loss account. It is relevant to note that the assessee paid commission on sale and were separately accounted for under the head commission on sale of Rs.48,55,646/-in profit loss account. The consignee agents make the sale on behalf of the assessee company to the distributor/dealer/retailer appointed by them for which they are paid commission at the fixed percentage as per the Agreement executed between them and TDS is deducted on the said commission. No dispute on this issue. Goods are sent to the consignee agents from Malanpur Unit for which the primary freight is paid on behalf of the assessee company. This freight paid is reimbursed by the assessee company by way of credit note. No dispute of this fact also. The sale of U.P., Rajasthan and Gujarat are through consignee agents. Agreements are executed between the assessee company and the consignee agents. The important clause for consideration is "That in consideration of various services rendered, the second party shall be commission @ 1% (one) on the value of the sales made by the second party during the financial year. In addition the first party shall also reimburse to the second party the expenses incurred by him (to be derived on fixed cost structure basis)". That on the receipt of goods by the consignee agents till the sales made by them, the consignee agents incur certain expenses on behalf of the assessee company which are otherwise to be incurred by the assessee company if the assessee company make direct sale at these places. The nature of expenses incurred by the consignee agents and reimbursed by the assessee company as per the agreement executed between them are :-

- a) *Unloading expenses on receipt of goods from the assessee company.*
- b) *Loading expenses when the goods are sent by the consignee agents for sale to distributor/ dealer/ retailer.*
- c) *Cartage paid on dispatch of goods/ sale to distributor/ dealer/ retailer.*
- d) *Traveling expenses of the staff kept by consignee agents or salary of the sales staff. The consignee agents sent the monthly details of sales on "Sale Patti. On the sale patti the consignee agent deducts their commission on sales and the expenses at the fixed cost rate structure as per Agreement. The assessee company by way of credit note amount for their expenses as pr Sale Patti, though the expenses incurred by the, are much more than the expenses accounted for by the assessee company. Copies of their Ledger Account of expenses incurred by them on behalf of Assessee Company have been filed and are put on record. It is also to note that that the expenses incurred by the consignee agents on behalf of the assessee company are from the sale amount collected by them as there always remain outstanding balance. Considering the facts of the case following points are not in dispute :-*
- i) *Consignee agents are making sales on behalf of assessee company on commission basis.*
- ii) *Consignee agent incurs expenses on sales on behalf of the assessee company.*
- iii) *Consignee agent maintains day to day details of expenses incurred by them for and behalf of the assessee company.*
- iv) *Monthly Sale Patti is sent by consignee agents along with ledger account of expenses incurred.*
- v) *In Sale Patti consignee agent, from the sale amount deduct their commission and expenses which they have to receive from the assessee company on the basis of fixed cost rate as per agreement.*
- vi) *On receipt of Sale Patti credit note for the expenses is issued.*
- vii) *In the books of the assessee company amount of credit note is debited under the head "Expenses on consignment sale".*

5.2 *The commission is said to be payment of commission if it is evident that it is being paid for service of a person provided in respect of sale of product of the assessee. In the case under consideration, the Id. Authorised Representative has demonstrated by filing various evidences and material of which copies have been placed in paper book. Copies of agreement, paper book page nos. 1 to 4, copies of Sale Patti page nos. 5 to 9 of the paper book, copies of ledger account of expenses page nos. 32 to 50. On perusal of agreement, we notice that as per clause-3 in addition to 3% sale, the agent is entitled to reimbursement of expenses. The relevant abstract of the agreement is reproduced as below :*

*“1.5 That on the receipt of goods by the consignee agents till the sales made by them, the consignee agents incur certain expenses on behalf of the assessee company which are otherwise to be incurred by the assessee company if the assessee company make direct sale at these places. The nature of expenses incurred by the consignee agents and reimbursed by the assessee company as per the agreement executed between them are :-*

*a) Unloading expenses on receipt of goods from the assessee company.*

*b) Loading expenses when the goods are sent by the consignee agents for sale to distributor/dealer/retailer.*

*c) Cartage paid on dispatch of goods/sale to distributor/dealer/retailer.*

*d) Traveling expenses of the staff kept by consignee agents or salary of the sales staff.*

*1.6 That the consignee agents sent the monthly details of sales on “Sale Patti”, copy enclosed (Page No.5 to 29) for kind perusal of your goodself. On the sale patti the consignee agent deducts their commission on sales and the expenses at the fixed cost rate structure as per Agreement. The assessee company by way of credit note amount for their expenses as pr Sale Patti, though the expenses incurred by the, are much more than the expenses accounted for by the assessee company. Copy of their Ledger Account of expenses incurred by them on behalf of assessee company are enclosed (Page No. 30 to 50) in support of the submission that the expenses incur by them are much more than the expenses reimbursed to them by way of credit note.*

*1.7. It is important to mention here that the expenses incurred by the consignee agents on behalf of the assessee company are from the sale amount collected by them as there always remain outstanding balance.*

*1.8. That the Assessing Officer has treated the reimbursement of expenses as commission paid only on the ground that the expenses are reimbursed at fixed rate and therefore it is not in the nature of reimbursement of expenses but it was part and parcel of commission on which tax at source has not been deducted and consequently made addition u/s 40a(ia) of the Act.”*

*5.3 The concerned parties have also furnished the sale Patti along with claim of the expenses on sale of consignment goods the claim of expenses given detail the expenses pertaining to the monthly selling expenses loading and unloading dealing with expenses. These expenses have been adjusted and accounted for in the account of respective parties. After considering these arguments, we notice that the impugned payment is reimbursement of the expenses and are not*

*the commission as the concerned party did not give any services in respect of the payment of expenditures made. Providing services is essentially requirement of the nature of transaction of a commission. Since this condition is not satisfied in the case under consideration therefore it is a case of reimbursement of the expenses incurred by the concerned party on behalf of the assessee. Under the circumstances, we find that the Revenue authority is not correct in taking such expenses as commission expenses. The finding of Revenue Authorities in this behalf is on presumption basis, without considering the relevant agreement/documents and books of account maintained by the assessee. We, therefore, set aside the orders of Revenue Authorities and the claim of the assessee is allowed.*

*5.4 Since this is not a commission payment, therefore, there is no question of deducting tax at source under Section 194H of the Act. Since the payment is not subject to tax deducted at source, therefore, provisions of Section 40(a)(ia) of the Act is not applicable on the issue. We therefore, delete the addition of Rs.28,14,174/-”*

**33.** We further observe that in circular no.715 dated 08.08.1995 **vide question no.6**, the issue was raised “whether payment under a contract for carriage of goods or passengers by any mode of transport would include payment made to a travel agent for purchase of ticket or payment made to a clearing and forwarding agent by carrying of goods, the answer given by CBDT read as under:

*“The payments made to a travel agent  
.....  
.....  
.....  
..... **As regards payments  
made to clearing and forwarding agent for  
carriage of goods, the same shall be subjected to  
tax deduction at source u/s 194C of the Act.”***

**34.** No doubt the Assessee, in the consignee and forwarding (CFA) agreement has used the word “**commission**” on sales on a monthly basis. However, it is a fact, as demonstrated above, that the **CFA** had very limited right, just to carry out the work, as per

the direction of the Assessee and had no authority to bind the Assessee with the third party directly or indirectly and the Assessee was/is supposed to work as per the direction, desire and welfare of the Assessee only. The role of the CFA is simplest of forwarding agent but not to make any contract with the third party qua goods delivered by the Assessee, either in its own name and/or on behalf of the Assessee. Simply by using any term such as "**commission**" as used in the instant case, ipso facto, would not entail raising the demand and/or treating the Assessee in default. As the title of the provision of section 194C of the Act, pertains to payments to **contracts or carrying out any "work"** which include carriage of goods or passengers by any mode of transport other than by railways, as defined in the provisions of section 194C of the Act itself. Admittedly, even otherwise, no addition on account of disallowance u/s 40(a)(ia) of the Act has ever been made during the scrutiny proceedings u/s 143(3) of the Act for the A.Ys. 2013-14 to 2018-19 and vide intimation u/s 143(1) of the Act for the A.Y. 2019-20, which also strengthens the case of the Assessee. Thus considering the peculiar facts and circumstances in totality and respectfully following the judgment rendered by Hon'ble High Court and the Tribunal in the cases referred to above, we are of the considered view that the Assessee has rightly deducted the TDS u/s 194C of the Act, hence the decision of the authorities below in treating the Assessee in default within the meaning of section 201(1) and 201(1a) of the Act and consequently making the demand of Rs.1,25,00,396/- is un-sustainable.

**35. Thus, on the aforesaid consideration and analyzations demand is deleted by allowing the appeal under consideration i.e. ITA No.6419/M/2024 filed by the Assessee.**

**36.** In view of our decision in **ITA No.6419/M/2024**, all appeals under consideration stands allowed.

**Order pronounced in the open court on 28.03.2025.**

**Sd/-**  
**(PRABHASH SHANKAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.