

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

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.93/Bang/2015
(Assessment Year : 2011-12)

Asst. Commissioner of Income-tax,
Circle -2(1), Mangaluru .. Appellant

v.

Shri. K. B. Balakrishna Rai,
Transport Operator,
Sri Navadurga Prasad, M. B. Road,
Mangaluru .. Respondent
PAN : ADRPR9587P

Assessee by : Smt. Soumya, Advocate
Revenue by : Smt. Swapna Das, JCIT

Heard on : 22.06.2016
Pronounced on : 26.08.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue its grievance is that CIT (A) deleted addition made by the AO u/s.40(a)(ia) of the Income-tax Act, 1961 ('the Act' in short).

02. Facts apropos are that assessee, a transport operator, had filed his return for impugned assessment year declaring income of Rs.5,99,130/-. During the course of assessment proceedings, AO noted that assessee had claimed the following commission expenditure :

Sl.No.	Particulars	Amount Rs.
1.	Drivers	21,08,761
2.	Conductors	12,67,550
3.	Cleaners	2,79,824
4.	Checking Inspectors	1,26,191
	Total	37,82,326

AO was of the opinion that the commission payment exceeded Rs.5,000/- in each case and therefore assessee ought to have deducted tax at source u/s.194H of the Act. Since no deduction was made AO invoked Section 40(a)(ia) against the total claim of expenditure of Rs.37,82,326/-. Disallowance of Rs.37,57,464/- was made.

03. Aggrieved assessee moved in appeal before the CIT (A). Contention of assessee was that the drivers, conductors, cleaners, checking inspectors were working as salaried persons. As per the assessee, the payment was shown as commission. These were nothing but salary paid to drivers, conductors, cleaners and checking inspectors.

04. CIT (A) was appreciative of these contentions. According to him assessee had paid fixed daily amount of Rs.300/- to drivers, Rs.200 to conductors, Rs.150/- to cleaners and monthly remuneration of Rs.4000/- to Rs.6000/- to checking inspectors. Ac per the CIT (A), what was paid as commission was a percentage of the collections at the end of the month and incentives. CIT (A) also noted that assessee produced trip sheets and vouchers to prove the above. He thus held that payments were made by assessee in his capacity as an employer and therefore deduction u/s.194H of the Act was not necessary. He deleted the disallowance.

05. Now before us, Ld. DR strongly assailing the orders of the lower authorities submitted that assessee could not show that it was not liable for deducting tax u/s.194H of the Act. As per the Ld. DR there was no employer-employee relationship between the assessee and conductors, drivers, cleaners and checking inspectors. Thus Ld. DR argued that CIT (A) fell in error in deleting the addition.

06. Per contra Ld. AR supported the order of the CIT (A).

07. We have perused the orders and heard the rival submissions. Finding of the CIT (A) is that the commission was paid as an incentive to

the drivers, conductors, cleaners and checking inspectors at the end of the month based on percentage of collections. It is not disputed that drivers, conductors, cleaners and checking inspectors were also getting daily wages from the assessee. Thus any additional amount received by such persons, working as employees or workers of the assessee could only be considered as a part of remuneration. Just because assessee had debited the amount as commission, would not change the complexion of the payment which squarely fell within the meaning of the term 'remuneration'. CIT (A) has clearly given a finding that there existed a master-servant relationship between the assessee and drivers, conductors, cleaners and checking inspectors which has not been rebutted by the Revenue. In the circumstances, we do not find any reason to interfere with the order of CIT (A).

08. In the result, appeal of the Revenue stands dismissed.

Order pronounced in the open court on 26th day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar