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(2012) 12 DEL CK 0046

In the Delhi High Court

Case No : ITA 516 of 2012

CIT — APPELLANT

Vs

Hindustan Lever Ltd. — RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Citation : (2013) 216 TAXMAN 280

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Karan Khanna, for the Appellant; Percy J. Pardiwalla, with Mr. Satyen Sethi, Nishant Thakkar and Mr. Arta Trana Panda, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The revenue claims to be aggrieved by the order dated 25.2.2011 of the Tribunal. The substantial question of law urged by it is that the Tribunal fell into error in holding that TDS was not recoverable from the assessee in terms of the Section 194-I, at 22%. The brief facts are that the assessee is a well known manufacture of consumer goods such as detergent, soaps etc. It hires godowns on rent and also engages c&f agents to manage them for various purposes. The assessing officer, for the financial year 2000-01 was of the view, after examination of form No. 26G and 26J, that the assessee wrongly deducted tax at 2.2% u/s 194C from the amounts paid to the c & f agents. The assessing officer was of the opinion that the assessee ought to have deducted tax at the rate of 22% u/s 194-I because they contain warehousing charges. Therefore, he treated the assessee in default of Rs. 78,43,252/- and charged interest of Rs. 25,29,448/- u/s 201(1A) and made consequential demands. Later he also initiated penalty proceedings u/s 271C. The assessee carried the matter in appeal; the CIT(Appeals) partly allowed the assessee''s claims directing separation of some amounts after due verification. The assessee carried the matter in further appeal to the ITAT; the revenue too was aggrieved by the CIT(Appeals)'' order. It preferred cross objections. The ITAT disposed of the cross-

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appeals holding as follows :

...In our view, Section 194-I can only be applied when the immovable properties are let out. None of the heads of payments made to C & F Agents by the assessee is a head of payment by way of rent. Section 194-I is not a residuary clause. It has been enacted specifically for rent from immovable property. The AO passed the order u/s 194-I of the Act. However, the Commissioner (Appeals) not being confined to section 194-I only, gave directions to the AO for bifurcation. In spite thereof the assessee is correct in contending that these directions are not based on material relevant to the record, in as much as it is borne out from the records that it is only one parties before the AO, which was taken into consideration before Commissioner (Appeals). Moreover, as rightly pointed out by the Ld. Counsel for the assessee, there is no such thing as "payment with regards to management and other specialized services". The payments made to the C & F Agents even categorized by the assessee, have been shown on records. In this view of the matter, the directions of the learned Commissioner (Appeals) are ill placed. All warehousing charges have wrongly been treated u/s 194-I of the Act, even though, different heads of payment made to the C & F Agents by the assessee company clearly show that was no payment towards rent, which could be covered u/s 194-I of the Act.

It has further been stated by the ld. counsel of assessee, that all of the payments have been effected to C & F Agent in pursuance of a contract with him, which is being covered U/s 194C of the Act, the payments made to him can''t be further divided under various heads and apply the relevant rates (i.e. U/s 192 and 194J of the Act) as per law. The sample copy of the C & F Agreement has also been placed on records to support this argument by the assessee.

The respective C & F Agents has paid the applicable tax in their returns of Income on all such receipts of payments from appellant company and the confirmations from C & F Agents have been placed on records for this purpose.

It has also been argued by Ld. counsel, that the TDS provisions are in the nature of machinery provisions which enables easy collection and recovery of tax. The said provisions are independent of the charging provisions which are applicable to the recipient of income whereas the TDS provisions are applicable to the payer of income. Since the applicable tax also been suffered and paid at the C & F agent level on all such payment, so it would be unfair on the part of the revenue to levy additional tax on such payments which has been already suffered full applicable tax as the level of its assessee.

2. After remand the CIT(A) deleted the entire demand of Rs. 1,03,72,700/-made by the assessing officer and allowed the appeal. The revenue''s appeal to the ITAT was dismissed.

3. The Tribunal has considered the previous orders as well as the materials on record such as the various lease deeds or the agreements that the assessee had entered into with the landlord/lessors. It analysed those as well as the c&f

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agreements and was able to discern that no element of rent was paid by the assessee to the c&f agents. In view of these facts the ITAT upheld the view of the CIT(Appeals) holding as follows :

6. We have carefully considered the rival submission in the light of material placed before us. A finding of fact has been recorded by ld. CIT(A) that entire detail of payment shows that there was no payment towards rent which could be covered by sec. 194I of the Act and in respect of premises used by the C & F Agents which were taken on rent by the assessee. TDS on rent was also deducted u/s 194I of the Act. The findings of fact recorded by CIT(A) have not been controverted by the revenue. Therefore, we are of the opinion that no case has been made out by the revenue to show that the nature of payments on which the tax was deducted by the assessee represent "rent" on which the tax was deductible u/s 194I of the Act. In absence of any such material, we decline to interfere in the finding of facts recorded by ld. CIT(A). Therefore, the appeal filed by the revenue is dismissed.

4. Ld. counsel for the revenue urges that the Tribunal fell into error in holding that the amounts paid to the c&f agent were not liable to be treated u/s 194-I. Counsel emphasizes that an overall reading of the c&f agency agreements did not bring out as clearly - as was held by the Tribunal - that the element of rent was present.

5. This Court is unpersuaded by the revenue''s contention. The CIT(Appeals) and the ITAT had the benefit of examining the entire documentary evidence which consisted of the various lease deeds and the c&f agents agreements. The conclusions drawn by these authorities on the basis of such scrutiny are concurrent. Even otherwise, if the revenue was of the opinion that any consideration paid to the c&f agent comprised of some elements such as rent, such a conclusion ought to have been supported by facts. What is discernable from the materials on record is that the assessee had rented premises from their landlords. Payments of rent were made after deducting the tax in terms of Section 194-I. What the assessee paid to the c&f agents as warehousing charges was the consideration in terms of the agreement which was tax deductible u/s 194C at 2.2.%. In this factual background it was for the revenue to have established how Section 194-I could be attracted to the amounts or charges paid to the c&f agents in terms of the agreements. 7. In this view of these facts, there is no infirmity in the findings of the CIT(Appeals) as endorsed by the ITAT. The substantial question of law is answered in favour of the assessee and against the revenue.

Appeal is dismissed.

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