

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

Sr Nos	ITA No(s)/COs	Asset. Year(s)	Appeal(s)/COs by Appellant vs. Respondent	
			Appellant	Respondent
1.	ITA No.161/Rjt/2017	2014-15	DCIT, Cir-TDS, Rajkot	M/s. Maahi Milk Producer Co. Ltd., 3 rd and 4 th floor, Sakar Building, Opp: Rajkumar College, Dr. Radhakrishna road, Rajkot. PAN No. AAICM 1550 E (assessee)
2.	CO No.9/Rjt/2017 (in ITA No.161/Rjt/2017)	2014-15	Assessee	Revenue
3.	ITA No.449/Rjt/2016	2013-14	ACIT, Cir-1(2), Rajkot. (revenue)	assessee
4.	CO No.3/Rjt/2017 (in ITA No.449/Rjt/16)	2013-14	Assessee	Revenue
5.	ITA No.60/Rjt/2016	2015-16	DCIT, Cir-TDS, Rajkot	Assessee
6.	CO No.7/Rjt/2016 (in ITA No.60/Rjt/2016)	2015-16	Assessee	Revenue
7.	ITA No.420/Rjt/2016	2013-14	Assessee	DCIT, Cir- 1(2), Rajkot.

Revenue by :	Shri Ranjit Singh, D.R.
Assessee by :	Shri Sanjay Shah, A.R.

सुनवाई की तारीख / Date of Hearing	13/03/2018
घोषणा की तारीख /Date of Pronouncement	23/03/2018

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 2 -

आदेश / ORDER

PER MAHAVIR PRASAD – JUDICIAL MEMBER:

The captioned appeals alongwith Cross Objections have been filed at the instance of the revenue and assessee against the appellate order of the Commissioner of Income Tax(Appeals)-1, Rajkot [CIT(A) in short] dated 10/03/2017, 24/10/2016, 29/12/2015, 24/10/2016 relevant to Assessment Years (AYs) 2014-15, 2013-14, 2015-16, 2013-14

2. Since in these appeals parties are same and grounds are almost common, therefore, for the sake of convenience, we would like to dispose of all these appeals together. First of all we would like to take up ITA No.161/Rjt/2017 for Asst. Year 2014-15:

- “1. The Ld. CIT(A) has erred in law as well as on facts of the case in holding that the assessee should not to be treated as assessee in default for non deduction of tax at source under section 194J on the ground of out of pocket expenses or auditors of Rs.2,17,114/-.
2. The Ld. CIT(A) has erred in law as well as on facts of the case in holding that tax is not required to be deducted at source u/s.194H of the I. T. Act on commission payments made to Sahayak.
3. The Ld. CIT(A) has erred in law as well as on facts of the case in holding that the assessee should not to be treated as assessee in default for non deduction of tax at source under section 194J of the I.T. Act, on short deduction of tax on payment of commissioner charges paid to dairies.
4. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have decided the issue under reference, in the light of evidence obtained by him during the appellate proceedings after following the due procedure of law.”

*ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16*

- 3 -

3. Briefly stated, facts are that the appellant is a company incorporated as a producer company which is engaged in the business of pooling & purchasing milk primarily from its members & processing milk and milk products through third party processors. It markets the milk products under brand name - "Maahi" A survey action u/s.133(2A) was carried out at the appellant's premises on 25/11/2014 for verification of TDS compliance and thereafter a show-cause notice was issued. Requesting the assessee to furnish the details of TDS made till date. Assessing Officer passed an order u/s.201(1) and 201(1A) on 28th March, 2016 holding the appellant to be an assessee in default for short deduction of tax at source from aggregate sum of Rs.3,37,12,318/- and raised demand thereof along with interest u/s.201(1A) of Rs.1,05,13,514/-, which is being challenged by the appellant and ld.CIT(A) partly allowed the appeal of the assessee.

4. Now department is before us.

5. We have gone through the relevant record and impugned order. So far Ground No.1 is concerned. Ld. AO has discussed the issue on Page No.10, Para 4(i) and ld. CIT(A) has discussed the detail at Page No.6, Para 5.3. As we can see that AO has contended that the payment for boarding and lodging expenses was made by the assessee to auditors on the basis of bills raised by them on which service tax was also charged and therefore, he considered it as payment to auditors which is taken at source u/s.194J. However, assessee submitted that the payment for boarding and lodging expenses of auditors was made by the assessee directly to the concern hotel on the basis of bills raised by the said hotels to the

*ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt/2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16*

- 4 -

assessee and there was no payment for boarding and lodging expenses to the auditors. In support of these facts, assessee has submitted copy of relevant bills and proof showing payment thereof in the paper book which were also furnished to the AO and similar issue had arisen in the A.Y. 2015-16 in appellant's own case and ld. CIT(A) gave the relief to the assessee. Assessee filed detailed reply to the AO and same is part of Paper Book at Page No.10 to 26.

6. As per the AR some amount was given to auditor for out of pocket expenses were paid by the assessee after deduction of tax. So in considered opinion, ld. CIT(A) has passed detailed and reasoned order, therefore, we do not want to interfere in the order passed by the ld. CIT(A) hence, this ground of appeal is dismissed.

7. So far as ground No.2 with regard to that Ld.CIT(A) has erred in law as well as on facts of the case in holding that tax is not required to be deducted at source u/s.194H of the I.T. Act on commission payments made to Sahayak. Ld. AO has discussed the matter on Page No.12, Para 4(ii) and ld. CIT(A) has discussed on Page No.19, Para 6.3. In this regard, ld AR stated that assessee company is established under Part IX-A of the companies Act for procuring milk from its members. Accordingly, assessee has established Milk Procurement Points at every village for pooling of milk from its member producer and assessee has engaged persons termed as Sahayak at these Milk Procurement Point to collect the milk. The Sahayak collects milk from the members, feeds the same in testing machines for determining fat & SNF content of the Milk. He stores the milk till the time the transporters appointed by assessee transport the same to the bulk chilling centre. Milk collection and payment system at Milk Procurement Point is entirely IT enable and the

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt/2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 5 -

Sahayak does not maintain any records of individual farmers and quality of milk procured for the assessee. The agreement with the Sahayak is on principal to principal basis. Same is part of Paper Book at Page No.146 and it is mentioned therein *“this agreement has been entered into on principal to principal basis and nothing contained in this agreement shall be deemed to neither constitute a joint venture partnership or agency relationship between the company and MAAHI nor authorise either party to made a representation or incur any liability on behalf of the other party”* Similar issue was arose during the Asst. Year 2015-16 in assessee’s own case. Ld. CIT(A) granted the relief to the assessee. Payment is made to Sahayak on percentage basis on various parameters like number of farmers pouring milk, fat and SNF factor in milk, quantity to mild collected etc. which ensures payment is commensurate with work performed. The nature of work carried out by the Sahayak are covered by provisions of section 194C and accordingly tax was deducted on the same accordingly. Ld. AR cited a decision of Bhopal Sugar Industries Ltd. vs. STO 40 STC 42 (SC) and CIT vs. Ahmedabad Stamp Vendors Association (25 taxmann.com 201)(SC). On the basis of the consistency, we dismiss this ground of appeal of department.

8. So far as Ground No.3 is concerned that the ld. CIT(A) has erred in law as well as on facts of the case in holding that the assessee should not be treated as assessee in default for non-deduction of tax at source under section 194J of the I.T. Act, on short deduction of tax on payment of commissioner charges paid to dairies. Ld. AO has discussed this issue at Page No.14 Para 4(iii) and ld. CIT(A) has discussed at Page No.26 Para 7.3. In this case, in support of its contention, assessee submitted copy of conversion agreement with Mother dairy Fruit and vegetable Pvt. Ltd. & Giriraj

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 6 -

Milk Products Ltd. Assessee further stated that it does not have own manufacturing facility, hence, it entered into job work contract with various dairies for conversion and packing of milk and milk products. Assessee provided raw milk and necessary materials to the dairies for processing as per specification of assessee. The dairies custom pack it on job work basis. Assessee deducted tax u/s.194C on conversion charges Rs.19.77 crores paid to such dairies since the job work falls within definition of 'work' u/s.194C. CBDT circular No.13/2006 dated 13th Dec, 2006 relied. Further stated the services rendered by the dairies are not technical services since the dairies are not expert on any technology which they could provide to the assessee, nor they provide any managerial services/consultancy services since there is no advice given by dairies to the assessee. The dairies are not assigned any exclusive work relating to quality check but are assigned work relating to conversion/processing of milk and milk products, wherein one of the requirements is to ensure quality parameters. The main and basic nature of transaction viz. conversion/processing of milk on job work basis does not lose its true characteristic. Similar issue was arisen for Financial Year 2014-15. Ld. CIT(A) had given relief to the assessee by these issues as follows:

- *"CIT(A) held that in view of the facts and nature of transaction payment is contractual in nature and appellant is justified in applying provisions of section 194C of the I.T. Act and cannot be considered as an assessee in default.*
- *CIT(A) held that dairies are not assigned any exclusive work relating to quality check but they are assigned work relating to conversion/processing of milk into packed milk and milk products where they are also required to ensure certain quality parameters and therefore the main and basic nature of transaction viz.*

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 7 -

conversion/processing of milk on job work basis does not lose its true characteristic of works contract. In support of its contention assessee filed copy of the order of the ld. CIT(A)."

9. In support of its contention, ld. AR cited a judgment of Madras High Court in case of Kumudam Publications (P.) Ltd. 55 Taxman 526 and Pune Tribunal in case of Bharat Forge Ltd. vs. ACIT 36 taxmann.com 574 held that payment made for getting jobs done like testing, inspection of materials, etc. were of nature of material & labour contract liable to TDS u/s.194C.

10. Respectfully following the above said judgments, CIT(A) has already given them relief in F.Y. 2014-15 and on the principle of consistency, we dismiss this ground of appeal of the department.

11. In the result, appeal filed by the department is dismissed.

12. Now we come to Cross Objection No.9/Rjt/2017 in ITA No.161/Rjt/2017 for Asst. Year 2014-15. Following Grounds has taken in this Cross Objection:

1. *The CIT(A) erred upholding the order u/s. 201(1) and 201(1A) for short deduction of tax without appreciating that section 201(1) does not envisage short deduction of tax on account of application of different section as a default under that section. It is submitted it be so held now.*
2. *The CIT(A) erred in not appreciating the fact that proviso to section 201(1) r.w.s 191 does not consider an assessee to be an assessee in default when the payee has paid tax direct on income subject to deduction of tax at source. It is submitted that it be so held now."*

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt/2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 8 -

13. Since we have already dismissed this ground in connected appeal No.161/Rjt/2017. So this Cross Objection is dismissed as infructuous.

14. Now we come to ITA No.449/Rjt/2016 for Asst. Year 2013-14. Following grounds has taken in this appeal:

“The ld.CIT(A)-1, Rajkot has erred in law and on facts of the case in deleting the addition on account of disallowance of Rs.1,95,59,757/- made u/s.40(a)(ia) treating the conversion charges u/s.194-C instead of 194-J of the Act.”

15. We have already given relief to the assessee and dismissed the ground raised by the department that assessee should have been charged u/s.194J of the I.T. Act. In ITA No.161/Rjt/2017, we have already given relief to the assessee and decide the matter against the department so this appeal is also dismissed.

16. Now we come to CO No.3/Rjt/2017 in ITA No.449/Rjt/2016 for Asst. Year 2013-14. Following Ground has taken in this Cross Objection:

“The AO erroneously disallowed proportionate expenses of Rs.1,95,59,757/- u/s.40(a)(ia) even though the provisions of section 40(a)(ia) does not provide so. It is submitted it be so held now.”

17. In ITA No.161/Rjt/2017, we have already decided this ground in favour of the assessee and against the department. Therefore, we hold that AO should have not disallowed the proportionate expenses of Rs.1,95,59,757/- u/s.40(a)(ia). Therefore, we set aside this matter to the file of the AO to calculate the proportionate expenses and

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 9 -

thereafter give effect to the appellant. In the result, this Cross Objection is allowed.

18. Now we come to ITA No.60/Rjt/2016 for Asst. Year 2015-16. In this case, following grounds has taken:

- “1. The Ld. CIT(A) has erred in law as well as facts of the case in holding that the assessee should not to be treated as assessee in default for non deduction of tax at source under section 194J on the ground of out of pocket expenses of auditors of Rs.2,48,069/-.
2. The Ld. CIT(A) has erred in law as well as facts of the case in holding that tax is not required to be deducted at source u/s.194H of the I.T. Act on commission payments made to Sahayak.
3. The Ld. CIT(A) has erred in law as well as facts of the case in holding that the assessee should not to be treated as assessee in default for non deduction of tax at source under section 194J of the I.T. Act, on short deduction of tax on payment of conversion charges paid to diaries.
4. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the A.O. passed u/s.201(1).”

19. In this case, all these common grounds have decided in favour of the assessee and against the department. So decision of ITA No.161/Rjt/2017 shall also apply in this appeal as well.

20. In the result, this appeal of the department is dismissed.

21. Now we come to Cross Objection No.7/Rjt/2016 in ITA No.60/Rjt/2016 for Asst. Year 2015-16. Following grounds have taken by the department in the Cross Objection:

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 10 -

- “1. The Ld. CIT(A) erred upholding the order u/s.201(1) and 201(1A) for short deduction of tax without appreciating that section 201(1) does not envisage short deduction of tax on account of application of different section as a default under that section. It is submitted it be so held now.
2. The CIT(A) erred in not appreciating the fact that proviso to section 201(1) r.w.s. 191 does not consider an assessee to be an assessee in default when the payee has paid tax direct on income subject to deduction of tax at source. It is submitted that it be so held now.”

22. Since we have already dismissed appeal of the department and with regard to ground no.1 we have already hold in connected appeal that assessee has not short deducted the tax hence, assessee is not hit by section 201(1).

23. With regard to Ground No.2 of the CO, we hold that assessee has paid tax direct on income subject to deduction of tax at source.

24. Therefore, we allow this Cross Objection of the assessee.

25. Now we come to ITA No.420/Rjt/2016 for Asst. Year 2013-14. Assessee has merely taken two Grounds in this appeal:

1. “The ld. CIT(A) erred in confirming the allowance of one fifth of Rs.74,68,695/- made by AO considering the same as pre-operative expenses. It is submitted it be so held now.
2. The CIT(A) erred in not appreciating the fact that the entire expenses were incurred after the business was set up and hence, should be allowed as revenue expenditure. It is submitted that it be so held now.”

26. In this case, assessee requested to not press these two grounds hence, this appeal is dismissed as withdrawn.

ITA No.161/Rjt/2017 & ITA Nos.449, 60 & 420/Rjt/2016
CO Nos.9&3/Rjt/2017 and CO No.7/Rjt/2016
M/s. Maahi Milk Producer Co. Ltd.
Assessment Years 2014-15, 2013-14 & 2015-16

- 11 -

27. In the result, ITA No.161/Rjt/2017, ITA Nos.449 & 60/Rjt/2016 are dismissed and ITA No.420/Rjt/2016 dismissed as withdrawn. Cross Objection No.9/Rjt/2017 is allowed and CO No.3/Rjt/2017 and CO No.7/Rjt/2016 are allowed.

This Order pronounced in Open Court on 23/03/2018

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated 23/03/2018

Priti Yadav, Sr. PS

Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Rajkot.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot