

## Discounted price charged from Hawkers for supply of newspaper is not commission and hence no TDS liability u/s 194H

**Summary – The Kolkata ITAT in a recent case of Abhijit Majumder, (the Assessee) held that discounted price charged from Hawkers for supply of newspaper is not commission and hence no TDS liability u/s 194H arises.**

### Facts

- The assessee was engaged in the business of trading in newspapers, magazines, etc and had paid certain amount to Hawkers as commission. The assessee did not deduct any TDS on the said amount.
- The Assessing Officer disallowed payment in question under section 40(a)(ia) since as per him the assessee was required to deduct tax at source from the said amount as per the provisions of section 194H.
- The Commissioner (Appeals) confirmed said disallowance.
- The assessee filed an appeal before the ITAT.

### Held

- The ITAT observed that the assessee is in the business of trading in newspapers and magazines and this position is accepted even by the Assessing Officer in his assessment order. The assessee only purchases newspapers and magazines and supplies to Hawkers for further sale to customers.
- The Hawkers deliver the newspapers and magazines to the customers and were compensated by the assessee by charging a discounted price of the newspapers and magazines. The supply and delivery of newspapers and magazines is made by the Hawkers on their own and not on behalf of the assessee as an agent.
- The Hawkers only compensation for supply or delivery of the newspapers is the cash discount that the assessee offers to them on the printed price.
- Looking at the *modus operandi* of the assessee's business as well as functions performed by the Hawkers, the ITAT opined that the amount paid by the assessee to the Hawkers was in the nature of discount and the same could not be treated as commission even if such nomenclature was used by the assessee in his books of account.
- The assessee was thus not required to deduct tax at source from the amount in question paid to the Hawkers and thus the disallowance under section 40(a)(ia) could not be made.