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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 527/2019

PR. COMMISSIONER OF INCOME TAX – 18 .....Appellant

Through: Mr.Indruj Singh Rai, Sr.SC with Mr.Sanjeev Menon and Mr.Rahul Singh, JSCs and Mr.Anmol Jagga, Advocate

versus

M/S NATIONAL AGRICULTURAL COOPERATIVE .....Respondent

Through: Mr.Satyen Sethi and Mr.Arta Trana Panda, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**ORDER**

% **09.09.2024**

1. The Principal Commissioner seeks to challenge the judgment rendered by the Income Tax Appellate Tribunal ["**Tribunal**"] dated 11 July 2018 and has posited the following questions of law for our consideration.

> "A. Whether the Hon'ble ITAT was justified in deleting addition of Rs. 5,82,52,900/- made by the AO u/s 40(a)(ia) when the assessee had been paying service charges/ society charges/ samiti charges and commission, without deducting TDS, to various district level/ primary level and state level cooperative societies and there was relation of Principal and Agent between the two as per Agreement and when state/ district/ primary level co-operatives were working as procurement agents of the assessee and the provisions of section 194H read with section 40(a)(ia) of I.T. Act were clearly applicable?"

2. The dispute pertaining to Section 194H of the Income Tax Act,

1961 ["**Act**"] and its applicability appears to have arisen in the context of the respondent-assessee which is a National Level Cooperative Agricultural Marketing Federation, having pursuant to the directives framed by the Government of India acted as the nodal agency for purchase of agricultural produce under the Price System Support Scheme and Marketing Intervention Scheme.

3. We take note of the following pertinent clauses which appear in the Agreement between the respondent-assessee and the State Level Supporters for "Price Support Operations Rabi Season 2007" and which also formed the subject matter of scrutiny of the Assessing Officer:-

> "3. RELATIONSHIP OF THE SUPPORTER WITH THIRD PARTIES
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> All transactions between the Supporter and third parties other than procuring societies shall be carried out as between the two principals without reference in any event to the NAFED. The Supporter also undertakes to make such third parties fully aware of the position aforesaid. NAFED will not be liable for any default or acts of omission or commission of the Supporter towards third parties and the Supporter agrees to indemnify NAFED in the event of any such claim against NAFED by the third parties. All persons employed by the Supporter shall be engaged by them as their own servants in all respects.
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> xxxx xxxx xxxx
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> 16. INFORMATION/DOCUMENTS
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> i. The Supporter understands that the Price Support Operations of mustard seed is in the account and on behalf of the Ministry of Agriculture, Government of India. They shall ensure that the same is undertaken by them on behalf of NAFED efficiently so that its maximum possible benefit is reaped by the farmers. The Supporter shall maintain all records/accounts of the said operation properly, making available timely information/ documents, etc. as and when required by NAFED/ Government of India.

> ii. It is clearly understood by both the parties that this agreement does not confer the status of an agent of NAFED on the second part but it extends full authority to facilitate and support procurement of the commodities covered, subject to the terms and conditions specified herein."

4. Bearing in mind the aforesaid and the complete absence of any material which may have even remotely indicated that a relationship of "principal" and "agent" existed, we find that the provisions of Section 194H were correctly found to be inapplicable. Consequently, there would be no justification to resort of Section 40(a)(ia) of the Act.

5. The appeal fails to raise any substantial question of law. It shall, consequently, stand dismissed.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**SEPTEMBER 9, 2024 /sv**