

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC-II, NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 2908/DEL/2016	
	A.Y. : 2012-13	
SHRI RAJIV JAIN, LSC NO. 105-107, VARDHMAN CITY CENTRE, NEAR SHAKTI NAGAR SUBWAY DELHI – 110 052 (PAN: ACHPJ9294L)	VS.	ASSISTANT COMMISSIONER OF INCOME TAX, ERSTWHILE CIRCLE-35(1), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Gautam Jain, Adv. & Sh.
Piyush Kumar Kamal, Adv.
Department by : Sh. Anil Kumar Sharma, Sr. DR

ORDER

Assessee has filed this Appeal against the impugned Order dated 01.3.2016 passed by the Ld. CIT(A)-34, New Delhi relevant to assessment year 2012-13 on the following grounds:-

1. *That the Ld. CIT(A)-34, New Delhi has erred both in law and on facts in upholding a disallowance of Rs. 14,64,940/- by invoking section 194D read with section 40(a)(ia) of the Act.*
 - 1.1 *That the Ld. CIT(A) has failed to appreciate that since section 194D of the Act was absent in the provisions of section 40(a)(ia) of the Act in the instant assessment year, thus the disallowance so*

made is altogether misconceived, misplaced and untenable.

1.2 That even otherwise and without prejudice section 194D of the Act had no application to the facts and circumstances of the case of the appellant in the instant year and as such the disallowance is otherwise too uncalled for.

1.3 That in any case since the payee had paid the taxes on the sums credited by the appellant, no disallowance was warranted in view of second proviso to section 40(a)(ia) of the Act.

It is therefore prayed that disallowance so made and upheld by the Ld. CIT(A) alongwith interest levied be deleted and appeal of the appellant be allowed.

2. The brief facts of the case are that the assessee filed his return of income on 28.3.2013 declaring income of Rs. 21,79,246/-. The assessee has derived income from business and profession, house property and other sources. During the assessment proceedings, the assessee has claimed the expenses of Rs. 14,64,990/- under the head referral charges. The AO proposed to disallow the expense u/s. 40(a)(ia) of the Act on account of non deduction of tax on the payment of these amounts to various parties for procuring customers for insurance business. In reply, assessee explained that he is an agent of HDFC, Standard Life Insurance Co. Ltd. The Standard Life Insurance Co. Ltd. was carrying on insurance business and the assessee was acting in fiduciary capacity to his principal and referral charges were paid to the people who refer clients to the assessee. As per assessee, these referral charges incurred by him

fall u/s. 194H of the I.T. Act, 1961 as his business is not insurance business but agency business and since he was not liable to tax audit u/s. 44AB of the Act, he is not liable to TDS also for referral charges incurred him. The explanation given by assessee was not found tenable by the AO on the ground that the assessee is acting as a life insurance agent of HDFC Standard Life Insurance Co. Ltd. and he is into the business of procuring, revival or renewal of insurance policies in respect of which he is paying commission to various parties under the guise of referral charges. As per him, referral charges are nothing but the insurance commission as mentioned in section 194D for which assessee was liable to make TDS. After reproducing the provisions of section 194D and 40(a)(ia) of the Act, AO concluded that since the assessee has not deducted tax at source on insurance commission paid by him as per provisions of section 194D of the Act, the commission expense of Rs. 14,64,990/- are not allowed u/s. 40(a)(ia) of the Act. He, therefore, disallowed this amount and added to the income of the assessee vide his order dated 12.2.2015 passed u/s. 143(3) of the I.T. Act, 1961.

3. Against the aforesaid assessment, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 01.03.2016 dismissed the appeal of the assessee.

4. Aggrieved with the order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 41 having copy of acknowledgment of return of income alongwith its computation of income and audited financial statement for financial year 2011-12

relevant to assessment year 2012-13; copy of reply dated 30.10.2014 filed by assessee before AO; copy of reply dated 15.12.2014 filed by assessee before AO; copy of reply dated 16.1.2015 filed by assessee before AO; copy of reply dated 21.1.2015 filed by assessee before AO; copy of reply dated 30.1.2015 filed by assessee before AO; copy of reply dated 21.12.2015; copy of assessments u/s. 143(3) of the I.T. Act in the case of the assessee in respect of assessment year 2009-10 & 2010-11; copy of detail of referral charges alongwith name, address, PAN of the payee and date of payment thereof and Comparative chart. He stated that in the assessment orders for the AY 2009-10 and 2010-11 the assessee has paid referral charges and claimed the deduction thereof and AO has not made any disallowance on account of non-deduction of TDS. He further stated that AO followed the similar practice in the preceding and succeeding assessment years also. Therefore, he requested that following the consistent view in the preceding and subsequent assessment years, the disallowance in dispute may be deleted and appeal of the assessee may be allowed accordingly.

6. On the other hand, Ld. DR relied upon the order of the authorities below and requested that the same may be upheld.

7. I have heard both the parties and perused the records available with me especially the orders of the revenue authorities and the Paper Book containing pages 1 to 41 having copy of acknowledgment of return of income alongwith its computation of income and audited financial statement for financial year 2011-12 relevant to assessment year 2012-13; copy of reply dated 30.10.2014 filed by assessee before AO; copy of reply dated

15.12.2014 filed by assessee before AO; copy of reply dated 16.1.2015 filed by assessee before AO; copy of reply dated 21.1.2015 filed by assessee before AO; copy of reply dated 30.1.2015 filed by assessee before AO; copy of reply dated 21.12.2015; copy of assessments u/s. 143(3) of the I.T. Act in the case of the assessee in respect of assessment year 2009-10 & 2010-11; copy of detail of referral charges alongwith name, address, PAN of the payee and date of payment thereof and Comparative chart. I have also gone through the assessment orders dated 18.11.211 for the AY 2009-10 and order dated 25.3.2013 for the AY 2010-11 and I find that the assessee has paid referral charges and claimed the deduction thereof and AO has not made any disallowance on account of non-deduction of TDS. I have further perused the Comparative Chart submitted by the Ld. Counsel of the Assessee filed with the Paper Book at page no. 41. For the sake of clarity, I am reproducing the Comparative Chart as under:-

COMPARATIVE CHART

Sr.No.	A.Y.	Amount of referral charges paid (Rs.)	Deduction claimed (Rs.)	Disallowance on account of non-deduction of TDS if any (Rs.)	TDS deducted or not	Assessment u/s.
i)	2004-05	1,59,910	1,59,910	NIL	No	143(1)
ii)	2005-06	2,91,692	2,91,692	NIL	No	143(1)
iii)	2006-07	NOT AVAILABLE				
iv)	2007-08	10,19,990	10,19,990	NIL	No	143(1)
v)	2008-09	8,12,395	8,12,395	NIL	No	143(3)
vi)	2009-10	12,81,570	12,71,570	NIL	No	143(3)
vii)	2010-11	49,995	49,995	NIL	No	143(3)
viii)	2011-12	4,89,995	4,89,995	NIL	No	143(1)
ix)	2012-13	14,64,990	14,64,990	14,64,990	No	143(3) (disputed in appeal)
x)	2013-14	NIL	NIL	NIL	NA	143(1)
xi)	2014-15	NIL	NIL	NIL	NA	143(1)
xii)	2015-16	11,70,841	11,7,0841	NIL		143(1)

7.1 After perusing the aforesaid Comparative Chart, I find that AO neither in the preceding years i.e. 2004-05 to 2005-06 and 2007-08 to 2011-12 and nor in subsequent years 2015-16, has made any disallowance on the issue in dispute. Therefore, following the consistent view adopted by the Department, in the preceding and in subsequent assessment years, as aforesaid, the addition made by the AO and upheld by the Ld. CIT(A) to the extent of Rs. 14,64,990/- in the present assessment year 2012-13 is hereby deleted and accordingly, the appeal of the assessee is allowed.

8. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 20/01/2017.

SD/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 20/01/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

Assistant Registrar, ITAT, Delhi Benches