IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI

Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM

ITA No. 185/Del/2014 : Asstt. Year : 2010-11

Cushman & Wakefield Property Management Services India Pvt. Ltd., B-6/8, Commercial Complex, Opp. Deep Park, Safdarjung Enclave, New Delhi-110029	Vs	DCIT, Circle-3(1), New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AACCC3657N		

Assessee by : Sh. G. C. Srivastava, Adv. &
Sh. Anubhav Jain, Adv.
Revenue by : Sh. Anshu Prakash, Sr. DR

Date of Hearing : 06.07.2017		**Date of Pronouncement : 11.07.2017**

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 08.11.2013 of ld. CIT(A)-VI, New Delhi.

2. The only ground raised in this appeal reads as under:

"The Ld. Commissioner of Income Tax (Appeals) - VI, New Delhi (hereinafter referred to as 'Id CIT(A)') has erred on facts and circumstances of the case in confirming the addition amounting to Rs. 14,50,350 on account of disallowance of irrecoverable debt (TDS certificates) written off on the premise that TDS recoverable from customer is not a bad debt and non receipt of TDS certificate cannot be reason for non claim of TDS credit due to appellant. Further, the Ld

CIT(A) has also erred in concluding that deduction of irrecoverable TDS is not available due to non-compliance with provisions of Income tax Act, 1961."

3. Facts of the case in brief are that the assessee filed its return digitally on 23.10.2010 declaring an income of Rs.3,50,70,596/- which was revised on 31.03.2012 at an income of Rs.2,89,28,123/-, the same was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee claimed a sum of Rs.14,50,350/- as written off TDS. The AO did not allow the claim of the assessee by observing as under:

"The claim of the assessee regarding allowance of Rs.14,50,350/- as a bad debt is not acceptable.

I. TDS recoverable from the client is not a bad debt.

II. If the TDS is deducted and paid into the Govt. account then non - recovery of certificate is not a reason for not claiming the TDS credit due to any person.

III. Assessee has not furnished any evidence that it has claimed and not allowed the credit of TDS due to the assessee.

IV. On perusal of the details, it is noticed that the clients from whom TDS certificates were not received

by the assessee includes multinational companies and other big corporate e.g. Adobe Software, GE Money, Hero Honda Tower, JP Morgen Services, Lucent Technologies. Oracle India etc.

V. Assessee has not furnished any reason for not receiving the TDS certificates from these corporate.

VI. Assessee has not submitted any documentary evidence that it has requested these clients for TDS certificates.

VII. Assessee submission "that these clients are not at all traceable now" cannot be accepted as many clients are multinational companies and have presence not only in India but all over the World."

4. The AO, rejected the claim of the assessee regarding allowance of written off TDS of Rs.14,50,350/- and added back to the taxable income of the assessee.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) who agreed with the AO and confirmed the disallowance.

6. Now the assessee is in appeal. The ld. Counsel for the assessee at the very outset sated that this issue is squarely covered by the decision of the ITAT Delhi Bench óDô, New Delhi in ITA No. 5435/Del/2011 for the assessment year 2008-09 in the case of ACIT, Circel-5(1), New Delhi Vs Kelly

Services India Pvt. Ltd., New Delhi (copy of the said order was furnished which is placed on record).

7. In his rival submissions the ld. DR supported the orders of the authorities below.

8. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts was a subject matter of the departmental appeal in ITA 5435/Del/2011 in the case of ACIT, Circel-5(1), New Delhi Vs Kelly Services India Pvt. Ltd., New Delhi wherein the identical issue has been decided in favour of the assessee by observing in para 16 of the order dated 31.10.2012 which reads as under:

> *"16. We have heard both the sides on the issue. Hon'ble Punjab & Haryana High Court in the case of CIT vs. Shreyans Industries Limited, cited supra, has granted the relief by holding as under:-*
>
> > *"23. We have heard both the parties and carefully considered the rival submissions with reference to facts, evidence and material on record. It is a fact that the assessee had offered gross amount of interest including TDS of Rs.2,04,259 to tax in the assessment year 1992-93. It is also a fact that the assessee was not allowed credit for the TDS of Rs.2,04,259 for want of TDS Certificates. It is also a fact that in spite of best efforts, the assessee could not obtain TDS certificates. Thus, it was a*

case of loss which has arisen to the assessee during the course of its business. In the case of Sutlej Cotton Mills Ltd. v. CIT (supra), Hon'ble Supreme Court has held that what is material is the factors or the circumstances which cause loss and the true nature and character of loss. If the loss occurred during the course of carrying on the business, it is incidental to it and, hence, allowable. Admittedly, in this case, the assessee suffered loss during the course of carrying on its business. Therefore, same is allowable. Judgment of Hon'ble Supreme Court in the case of Sutlej Cotton Mills Ltd. v. CIT supports the case of the assessee. We do not find any infirmity in the order of Ld. CIT(A). Same is upheld and this ground of appeal of the revenue is dismissed."

The CIT (A) has also considered the decision of ITAT, 'G' Bench, Mumbai in the case of Addl. CIT , Range 7 (3), Mumbai vs. Yahoo Web Services P. Ltd. in ITA No.20042/Mum/2010 dated 28.01.2011 wherein the ITAT has decided the issue by holding as under:-

"6. We find that in National Aluminum Co. ltd's case (supra), Hon'ble Supreme Court was in-seisin of a situation in which assessee had claimed deduction in respect of demand under section 201 r.w.s. 195 that the assessee had to pay because it failed to discharge the tax deduction obligations imposed on the assessee. Their Lordships were .of the considered view that the payment made by the assessee on account of his-·not discharging the tax deduction obligations, and, therefore, the same could not be allowed as deduction on business income. As against the position that Hon'ble Supreme Court were dealing with, we are

right now dealing with a situation in which neither the assessee got the money, lawfully due to him, as it was said to have been retained as tax deduction at source, nor did the assessee get any tax credit in computation of it's tax liability. The amounts represented by such tax deductions, which were unavailable for tax credits, clearly represented loss incurred by the assessee in the course of bonafide business activities. On these facts, as held by Hon'ble Punjab & Haryana High court in the case of Shreyans Industries (supra), there is no infirmity in assessee being allowed deduction in respect of the loss so incurred to the assessee. We approve the conclusions arrived at by the CIT (A) and decline to interfere in the matter."

We would also like to mention that in the case of Indian Aluminium Co. Ltd. vs. CIT – 79 ITR 514 (SC), the issue under consideration was different than the issue before us in the present case. In that case, the principle business of the assessee company was manufacturing of aluminium ingots, sheets and other aluminium products. Assessee entered into an agreement with the company in Montreal, Canada and as per this agreement, there was an annual retainer-ship fee to be paid but there is no condition or stipulation that how the fee would be payable by the assessee without deduction of tax under the provisions of tax applicable at the relevant time. The assessee paid the total fee without deducting the tax and the Assessing Officer treated the assessee as being in default. The assessee paid the sum towards such tax and asked for reimbursement from the company based in Montreal, Canada. The company based in Montreal, Canada refused to reimburse the same on the ground that it was not bound morally or contractually to meet the obligation of the Indian tax liability and in such a situation, the assessee wrote off the amount during the relevant accounting period. While in assessee's case, the

issue involved is having the similar facts as involved in the case of CIT vs. Shreyans Industries Limited, cited supra. Considering these facts, we sustain the order of the CIT (A) on this issue."

9. So, respectfully following the aforesaid referred to order dated 31.10.2012 in the case of ACIT, Circel-5(1), New Delhi Vs Kelly Services India Pvt. Ltd., New Delhi, the impugned addition made by the AO and sustained by the ld. CIT(A) is deleted.

10. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 11/07/2017)

Sd/-	**Sd/-**
(K. N. Chary)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 11/07/2017
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR