

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3906/Del /2013
Asstt. Year: 2010-11**

DCIT, Circle 37(1), New Delhi.	vs	Aggarwal law Associates, 34, 1st Floor, Bengali Market, Babar Lane, New Delhi.-110001 (PAN: AABFA1893L)
(Appellant)		(Respondent)

Appellant by : Shri R.C. Dandey, Sr. DR
Respondent by : Shri P.C. Yadav, Adv.

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the department against the order passed by the Ld. Commissioner of Income Tax (A)-XXVIII, New Delhi for assessment year 2010-11.

2. Brief facts of the case are that the assessee is a law firm and the return of income was filed declaring income of Rs.5,95,41,270/-. The case was fixed for scrutiny and during the course of assessment proceedings, the Assessing Officer made the following disallowances:-

- i) On reconciliation of TDS as per books with Form 26AS, the Assessing Officer observed that the assessee had claimed credit of TDS amounting to Rs. 8,19,286/- which was not appearing in Form 26AS. Subsequently, the assessee produced TDS certificates of Rs. 7,19,423/- only and the Assessing Officer proceeded to disallow TDS credit of Rs. 99,683/-.
- ii) The Assessing Officer further observed that in certain cases of professional income, the assessee had claimed TDS credit which was equal to the professional receipts offered for taxation. The Assessing Officer applied Rule 37BA(iii) of the Income Tax Rules, 1962 and proceeded to disallow TDS credit of Rs. 31,10,744/- on the ground that the assessee had shown professional income of Rs. 34,56,382/- only and, therefore, only TDS credit @10% on such income was allowable.
- iii) The Assessing Officer also made an addition of Rs.25,455/- on account of difference in credit card expenses as per the AIR and books of accounts.

- iv) Further, the Assessing Officer made an *ad hoc* disallowance of Rs. 90,000/- on account of unverifiable expenses debited under repairs and maintenance expenses, general expenses and office expenses;
- v) The Assessing Officer also disallowed Rs. 1,42,174/- being 10% of vehicle maintenance and vehicle depreciation on the ground that personal use of car could not be ruled out.
- vi) The Assessing Officer also disallowed 10% of telephone expenses and depreciation on mobile on the ground of personal use and the disallowance was made at Rs. 86,755/-.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority who directed the Assessing Officer to allow the assessee TDS credit of Rs. 31,10,744/-. The Ld. Commissioner of Income Tax (A) also deleted the disallowance of Rs. 90,000/- out of aggregate expenses of repairs and maintenance, general expenses and office expenses. Similarly, the Ld. Commissioner of Income Tax (A) also deleted a disallowance made out of vehicle running and maintenance and vehicle depreciation. The Ld.

Commissioner of Income Tax (A) also deleted the disallowance out of telephone expenses and mobile depreciation. The Ld. Commissioner of Income Tax (A), however, confirmed the disallowance of Rs. 25,455/- pertaining to difference in credit card expenses as per the AIR information and the books of accounts.

2.2 Now, the aggrieved department has approached the ITAT and has raised the following grounds of appeal:-

“1. In the facts and circumstances of the case the Ld. CIT(A) has grossly erred in allowing TDS credit of Rs.31,10,744/- which was withdrawn by the A.O. as per the provisions of section 199 of the I.T. Act, 1961 read with rule 37BA of the I.T. Rules, 1962.

2. In the facts and circumstances of the case the Ld. CIT(A) has grossly erred in allowing TDS credit of Rs. 31,10,744/- which was withdrawn by the A.O. not appreciating the fact that TDS credit shall be given in the assessment year in which the corresponding receipts are assessable as per the provisions of Rules 37BA of the I.T. Rules, 1962.

3. In the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by the A.O. on account of expenses under the head repair & maintenance, general and office expenses without appreciating the facts that he assessee failed to substantiate his claim with evidence.

4. In the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by the A.O. on account of vehicle maintenance & depreciation on vehicle appreciating the facts that the assessee has failed to produce documentary evidence to prove that the above

expenses were incurred wholly and exclusively for business purposes.

5. *In the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by the A.O. on account of telephone expenses and depreciation on mobile without appreciating the facts that the assessee failed to produce documentary evidence to prove that the above expenses were incurred wholly and exclusively for business purposes.*

6. *That the grounds of appeal are without prejudice to each other.*

7. *The appellant craves leave to add, amend or modify the ground of appeal at any time.*

It is prayed that the order of CIT (A) is contrary to the facts on record and the settled position of law; and the order of the A.O. deserves to be restored.”

3. The Ld. Sr. DR submitted that the assessee was following the cash system of accounting and not mercantile system of accounting and, therefore, the credit of TDS can be given only in the year in which the professional income was offered for tax. It was submitted that since the assessee had shown professional income of Rs. 34,56,382/-, only 10% of the TDS was to be allowed as tax credit to the assessee. The Ld. Sr. DR also read out the provisions of section 199 of the Income Tax Act, 1961 (hereinafter called 'the Act') and Rule 37BA(3)(i) of the Income Tax Rules and submitted that the Assessing Officer had followed the provisions as provided in the Income Tax Act and the Rules and, therefore, the order of the Assessing Officer should be restored.

3.1 On the other grounds being raised by the department, the Ld. Sr. DR placed reliance on the findings of the Assessing Officer and vehemently argued that the disallowances had been made after due consideration of the facts that in respect of vehicle running expenses, log book was not maintained. Similarly, in respect of repairs and maintenance expenses, general expenses and office expenses, complete vouchers were not available. Similarly, in respect of telephone expenses also, use of telephone for personal use was not negated by the assessee by evidence.

4. In response, the Ld. AR submitted that as far as the issue of TDS credit was concerned, there could not be a double taxation of the income and the mismatch had occurred due to cash system of accounting being followed by the assessee whereas the deductors had accounted for the same on accrual basis. It was also submitted that the TDS was duly deposited by the deductors within time. Reliance was placed on the order of the ITAT Delhi Bench in the case of DCIT vs M/s Lloyd Insulation (India) Ltd. in ITA No. 2400/Del/2011 wherein the ITAT Delhi Bench had examined and discussed the provisions of section 199, section 191, section 190 and Rule 37BA and, thereafter, had upheld the

order of the Ld. Commissioner of Income Tax (A) allowing credit of TDS.

4.1 On the other grounds raised by the department, the Ld. AR placed reliance on the findings of the Ld. Commissioner of Income Tax (A) and vehemently argued that the order of the Ld. Commissioner of Income Tax (A) be upheld.

5. We have heard the rival submissions and perused the material available on record. As far as ground nos. 1 and 2 of the department's appeal relating to TDS credit of Rs. 31,10,744/- are concerned, the Assessing Officer has observed that the TDS credit of only Rs. 3,45,638/- was allowable as the assessee had shown professional income of Rs. 34,56,382/- only. However, while doing so, the Assessing Officer has not considered the response of the assessee to his show cause notice wherein the assessee has stated that it has claimed TDS of Rs. 34,56,382/- (as has been deducted up to 31.3.2010) as the professional income and the remaining fees have been claimed without TDS in subsequent financial years as and when they were received. The assessee has also clarified that this has been done so because the assessee was following the cash system of accounting. The Ld. Commissioner of Income Tax(A), while directing the Assessing

Officer to allow the credit of TDS, has noted that orders of ITAT Delhi Bench in DCIT vs M/s Lloyd Insulation (India) Ltd. (supra), ITO vs Sikka International Freight Services Pvt. Ltd. in ITA No. 2617/Del/2008, Praveen Kumar Gupta vs ITO in ITA No. 1252/Del/2012 and the Hon'ble Delhi High Court on its own motion vs Commissioner of Income Tax in Writ Petition (Civil) No. 2659/2012 and All India Federation of Tax Practitioners vs. UOI and others in Writ Petition (Civil) No.5443/2012 have directed that the credit be allowed. We have also perused the orders cited before the Ld. Commissioner of Income Tax (A) and duly noted by him in his appellate order while allowing relief to the assessee. We are of the considered opinion that the ratio of the judgments as mentioned in the order has been rightly applied by the Ld. CIT (A). Therefore, we find no reason to interfere with the directions of the ld. Commissioner of Income Tax (A) in this regard and we uphold the same. Accordingly, ground no. 1 & 2 of the department's appeal are dismissed.

5.1 As far as ground no. 3 regarding addition on account of repairs and maintenance, general and office expenses is concerned, the Ld. Commissioner of Income Tax (A) has noted that the disallowance had been made by the Assessing Officer on

an estimate without pinpointing any specific vouchers for disallowance. The Ld. Commissioner of Income Tax (A) has also noted that a similar disallowance has been made in assessment year 2007-08 against which the assessee had not filed any appeal. A perusal of the assessment order shows that the Ld. Commissioner of Income Tax (A) is absolutely correct in observing that the disallowance has been made on an estimate and we are also in agreement with the adjudication of the Ld. Commissioner of Income Tax (A) that *ad hoc* disallowance without pointing out any specific defect or lacuna is not sustainable. Therefore, we uphold the adjudication of the Ld. Commissioner of Income Tax (A) on this issue also and dismiss ground no. 3 of the department's appeal.

5.2 As far as the disallowance on account of personal use of vehicle maintenance is concerned, although the Ld. Commissioner of Income Tax(A) has deleted the disallowance, it is an admitted fact that the assessee has not been maintaining any log book and, therefore, while we uphold the action of the Ld. Commissioner of Income Tax(A) in deleting the disallowance on account of depreciation, we are of the considered opinion that 10% of vehicle running and maintenance expenses is a

reasonable estimate and in absence of log book, we set aside the order of the Ld. Commissioner of Income Tax(A) on this issue and restore the disallowance. Thus, ground no. 4 is partly allowed.

5.3 As far as ground no. 5 pertaining to disallowance of 10% out of telephone expenses is concerned, we are of the considered opinion that in absence of details, this disallowance also needs to be upheld. Hence, we set aside the order of the Ld. Commissioner of Income Tax (A) on this issue and restore the disallowance.

6. In the result, the appeal of the department is partly allowed.

Order is pronounced in the open court on 20th November, 2017.

sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 20th NOVEMBER, 2017

'GS'

Copy forwarded to:

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

TRUE COPY

By Order

ASSISTANT REGISTRAR

