

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.651/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2012-13)

DCIT, Circle-22, Kolkata	Vs.	M/s. Deloitte Haskins & Sells
54/1, Rafi Ahmed Kidwai Road, 4 th Floor, Kolkata – 16.		Plot No. EP& GP, Sector-V, Salt Lake Kolkata – 91.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : A A D F D 5357 J		
(Appellant)	..	(Respondent)

Appellant by : Shri A. Bhattacharjee, Addl. CIT
Respondent by : Ms. Pooja Jain, Ld. AR

सुनवाईकीतारीख/ Date of Hearing : 09/07/2018

घोषणाकीतारीख/Date of Pronouncement : 28/09/2018

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2012-13, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-6, Kolkata, in Appeal No.59/CIT(A)-6/Kol/15-16 dated 10.01.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2015.

2. The grievances raised by the Revenue are as follows:

“(i)The ld. CIT(A) has erred on facts and in law in giving relief for payment of subscription & technology fee of Rs.44,27,412/- paid by assessee without deducting any tax at sources violating the provision of section 194J of the Act read with section 40(a)(ia) of the Act.

(ii) The ld. CIT(A) has erred on facts and in law in giving relief for payment of rent for computer of Rs.60,49,727/- paid by the assessee without deducting any tax at source violating the provision of section 194I of the IT Act read with section 40(a)(ia) of the Act.

(iii) The ld. CIT(A) has erred on facts and in law in giving relief for payment of indemnity insurance expense of Rs.7,75,567/- not incurred exclusively for the purpose of business in contrary to the provision of u/s 37(1) of the Act.

(iv) The appellant craves leave to add, alter or amend any or all grounds of appeal on or before the date of hearing.”

3. Ground No.1 raised by the Revenue relates to payment of subscription & technology fee of Rs.44,27,412/- paid by assessee without deducting any tax at sources, violating the provision of section 194J of the Act read with section 40(a)(ia) of the Act.

4. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 11/07/2018, passed by the Division Bench of this Tribunal in assessee's own case in ITA No.587 & 588/Kol/2016, for assessment Years 2010-11 & 2011-12, whereby the issue of payment of subscription & technology fee has been discussed. Learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

5. Learned Departmental Representative did not have much to say but he nevertheless relied upon the order of the assessing officer.

6. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee's own case vide order dated 11.07.2018, in ITA No.587 & 588/Kol/2016 (Supra). In this order, the Tribunal has inter alia observed as follows:

“10. We have heard learned arguments on both sides and perused the material available on record, we note that, so far as the case before us is concerned, the assessee paid an amount of Rs. 48,95,212/- to DHS, Mumbai. It is the claim of the assessee that payment was its share of subscription allocated to various Indian entities of a common global network on the basis of the revenue by

DHS, Mumbai, of which the assessee is a member. The total subscription is paid by DHS, Mumbai after deduction of tax at source (TDS) to DTT towards utilization of common knowledge systems, common information technology systems and better access for clients of uniform and high quality services by the Indian members of the network. The assessee's contribution/share of Rs.48,95,212/- comprised its share of Rs.31,86,534/- for the relevant previous year and differential share of Rs.17,08,679/- paid for the earlier years being the difference between the contribution payable on the basis of the revenue and contribution already paid earlier for those years and was claimed in line with the cash system of accounting followed by the assessee. The assessee produced debit notes issued by DHS, Mumbai as supporting evidence. The assessee has to pay subscription fees through Delloite, Haskins and Sells , Mumbai (DHS, Mumbai) for this purpose to DTT. However, as DHS, Mumbai makes the payment after deducting TDS and the assessee only reimburses its share of expenses, tax was not required to be deducted again in respect of its reimbursement of share of expenses of Rs.48,95,212/- to DHS, Mumbai. We note that it is not the case of the AO that the expenses were not genuine. It is also not the case of the AO that the expenses were not incurred wholly and exclusively for the purposes of business or profession. The assessee has claimed the expenses in accordance with its cash system of accounting and the AO has not disputed the system of accounting. The AO has concluded that the assessee had paid for the professional services rendered by DHS, Mumbai without specifying the nature and details of services rendered by DHS, Mumbai. The assessee has furnished copies of debit notes issued by DHS, Mumbai mentioning the amount debited as "being your share of DTT Operational Budget (Subscription Fee) & Tech, Subscription Fees paid to Deloitte Touch Tohmatsu, New York" which have not been questioned by the AO. The assessee has also furnished evidence to prove that the assessee is a member of the global network of DTT, enjoys certain advantages as a result of the membership and has paid its contribution of the subscription to the membership of the global network.

11. We note that Hon`ble High Court of Bombay in the case of CIT vs. Zee Entertainment Enterprises Ltd. [2018] 92 taxmann.com 30 (Bombay) held that reimbursement of expenses is not taxable. Similarly, the Hon`ble High Court of Karnataka in the case of CIT vs. Kalyani Steels Ltd. [2018] 91 taxmann.com 359 (Karnataka), held as follows:

"11.This provision makes it clear that deduction at source shall be on such income not otherwise. The primary factor to attract section 194J is the ingredient of "income comprised therein". If no income is reflected in the balance sheet and P&L A/c of HSL towards the reimbursement charges paid on cost to cost basis by KSL and ML, it ceases to have the character of income. As such, the assessee cannot be treated as the assessee in default in not deducting tax at source u/s 194J of the Act. The arguments of the Revenue that the fees paid by the assessee is towards technical services is imaginary one not established with substantial materials."

Moreover, we note that Coordinate Bench of ITAT Kolkata in the case of DCIT vs. Ernst & Young (P.) Ltd. [2014] 49 taxmann.com 386 (Kolkata – Trib.) upheld the same principle on the identical issue under consideration, wherein it was held as follows:

“The two concerns, namely, EYGS LLP and Ernst and Young U.K. LLP, were set up by member firms of Ernst and Young for providing resources to obtain best methodologies at a lower cost which in the present days of globalization is imperative for any professional firm. Development of such methods by any one concern would have been cost prohibitive apart from lacking uniformity and mutual compatibility. Accordingly, arrangement was arrived at for such services to be developed in a pool by the said two concerns to which the member firms would have access to it and reimbursing their respective shares of cost incurred therefor. Such reimbursement was agreed on the basis of respective turnover of the member firms. These facts are not denied by the revenue and these are reimbursement of expenses. Once these are reimbursement of expenses, the assessee is not liable to deduct TDS u/s 195. Accordingly, the order of the Commissioner (Appeals) is to be confirmed.”

Therefore, we note that the said amount of Rs.48,95,212/- was towards the reimbursement of the expenses, which was in fact incurred on behalf of the assessee and there was no profit element. That being so, we decline to interfere with the order of Id. C.I T.(A) deleting the aforesaid addition. His order on this addition is, therefore, upheld and the ground No.1 raised by the Revenue in ITA No.587/Kol/2016 and ground No.2 raised by Revenue in ITA No.588/Kol/2016, are dismissed.”

7. As the issue is squarely covered in favour of the assessee by the judgment of the Coordinate Bench in assessee’s own case (supra) and the ld. DR for the Revenue is unable to produce any material to controvert the aforesaid findings and there is no change in facts and law and the ld. CIT(A) has allowed the appeal of the assessee, we find no infirmity in the order passed by ld CIT(A), hence we decline to interfere in the said order of the ld. CIT(A) and the same is hereby upheld. Therefore, Ground No.1 raised by the Revenue is dismissed.

8. Ground No.2 raised by the Revenue relates to relief for payment of rent for computer of Rs.60,49,727/- paid by the assessee without deducting any tax at source violating the provision of section 194I of the IT Act read with section 40(a)(ia) of the Act.

9. At the outset itself, it was pointed out that the said issue is covered by the judgment of the Coordinate Bench in assessee's own case in ITA No.587 & 588/Kol/2016, Assessment Years 2010-11 & 2011-12, whereby the Tribunal has deleted the addition made by the Assessing Officer on identical issues. The relevant para of the order of the Tribunal is given below:

"16. We have given a careful consideration to the rival submissions and perused the material available on record, we note that the assessee has furnished copy of the rent agreement, to the assessing officer to show that laptops were taken on rent by DTTIPL. There is no material on record to show that the assessee had taken the laptops on rent directly. That the payment has been made by the assessee to DTTIPL is also not disputed by the assessee. The details on record including the details of apportionment of rent on the basis of number of employees of the participating user entities goes to show that the essence of the transaction was obtaining on lease of laptops by DTTIPL for use by employees of various concerns forming part of the network in India and the rent was paid by DTTIPL to Rent Works India (P) Ltd. after deduction of tax at source at the applicable rate. The AO has held that tax was deductible at source presuming that the assessee had obtained the laptops on rent from DTTIPL which is not correct and cannot be inferred on the basis of the facts on record. Therefore, the assessee had reimbursed its share of the rent for the laptops to DTTIPL. In view of the legal position governing such reimbursement of expenses discussed in connection with reimbursement of subscription fees in para 11 of this order, no tax is deductible at source on such payments. Moreover, we note that that a similar deduction on account of rent of Rs. 16,89,928/- reimbursed to DTTIPL was claimed and allowed by the AO in scrutiny assessment for the A.Y.2008-09.

We note that it is a well settled legal position, as discussed by ld CIT(A) also that factual matters which permeate through more than one assessment year, if the Revenue has accepted a particular view or proposition in the past, it is not open for the Revenue to take a entirely contrary or different stand in a later year on the same issue, involving identical facts unless and until a cogent case is made out by the Assessing Officer on the basis of change in facts. For that we rely on the order of the Hon'ble Supreme Court in Radhasoami Satsang vs. CIT 193 ITR 321 (SC), wherein it was held as follows:

"We are aware of the fact that, strictly speaking, res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter - and, if there

was no change, it was in support of the assessee – we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken.

We note that there is no change in facts of the assessee under consideration and this ratio is squarely applicable to the facts of the assessee's case. That being so, we decline to interfere with the order of Id. CIT(A) deleting the aforesaid addition. His order on this addition is, therefore, upheld and the ground No.2 raised by the Revenue in ITA No.587/Kol/2016 and ground No.1 raised by Revenue in ITA No.588/Kol/2016, are dismissed.”

10. As the issue is squarely covered in favour of the assessee by the judgment of the Coordinate Bench in assessee’s own case (supra) and the Id. DR for the Revenue is unable to produce any material to controvert the aforesaid findings and there is no change in facts and law and the Id. CIT(A) has allowed the appeal of the assessee, we find no infirmity in the order passed by Id CIT(A), therefore, we decline to interfere in the said order of the Id. CIT(A) and the same is hereby upheld. Therefore, Ground No.2 raised by the Revenue is dismissed.

11. Ground No.3 raised by the Revenue relates to relief for payment of indemnity insurance expense of Rs.7,75,567/- not incurred exclusively for the purpose of business in contrary to the provision of u/s 37(1) of the Act.

12. At the outset itself, it was pointed out that the said issue is covered by the judgment of the Coordinate Bench in assessee’s own case in ITA No.587 & 588/Kol/2016 Assessment Years 2010-11 & 2011-12 whereby the Tribunal has deleted the addition made by the Assessing Officer on identical issues. The relevant para of the order of the Tribunal is given below:

“20. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that like any other insurance premium, the assessee has paid it to cover itself against loss arising out of damages etc. claimed from it in consequence of wrongful act in connection with professional business. Therefore, the assessee is not insured for unlawful acts or acts opposed to public policy or law. The fact that the policy has to be renewed every year by paying renewal premium precludes any enduring benefits resulting from the policy

and the payment of the premium is clearly to cover losses to the business. Thus, the expenditure on professional indemnity insurance has been incurred wholly and exclusively for the purpose of business and is an admissible deduction. For that we also rely on the judgment of the Coordinate Bench of Mumbai Tribunal, in the case of M/s. A.F. Ferguson Associates vs. ACIT in ITA No.6962/M/2012, wherein it was held as follows:

“5. Ground No.2 relates to the disallowance on account of premium paid for professional indemnity insurance. The AO disallowed the insurance premium expenditure of Rs.2,10,000/- observing that the said expenditure was made on the life insurance of the partners of the firm. Since the above payments were made on the personal insurance of the partners and the expenses were not related to the professional activity of the assessee firm he therefore disallowed the said expenditure.

6. The ld. CIT(A) making the same observations confirmed the said disallowance made by the AO.

7. We have heard the ld. representatives of both the parties and also have gone through the records. The ld. representative of the assessee submitted before us that the said expenditure was not incurred on the life insurance of the partners rather the same was in relation to professional indemnity insurance of the partners of the firm.

8. Since the firm is providing professional services and as such the professional indemnity insurance premium thus was related to the professional activity of the partners of the firm and was for indemnification of any loss arising out of any claim of damages or compensation payable by the assessee firm or its partners in relation to the professional services provided by them to their clients. Under such circumstances the observation of the lower authorities that the said expenditure was in relation to personal expenditure is wrong and accordingly the addition made under this head is hereby set aside. This ground of appeal is also allowed in favour of the assessee.”

We note that the facts narrated in the case of M/s. A.F. Ferguson Associates (supra) are squarely applicable to the facts of the assessee's case under consideration. Hence, the expenditure on professional indemnity insurance has been incurred wholly and exclusively for the purpose of business and is an admissible deduction. That being so, we decline to interfere with the order of Id. C.I T.(A) deleting the aforesaid addition. His order on this addition is, therefore, upheld and the ground No.3 raised by the Revenue in ITA No.587/Kol/2016 and ground No.3 raised by Revenue in ITA No.588/Kol/2016, are dismissed.”

13. As the issue is squarely covered in favour of the assessee by the judgment of the Coordinate Bench in assessee's own case (supra) and the ld. DR for the Revenue is unable to produce any material to controvert the aforesaid findings and there is no change in facts and law and the ld. CIT(A) has allowed the appeal of

the assessee, we find no infirmity in the order of Id CIT(A), his order on this issue is hereby upheld. Therefore, Ground No.3 raised by the Revenue is dismissed.

14. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 28.09.2018.

Sd/-
(S. S. GODARA)

न्यायिकसदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 28/09/2018

(RS, Sr.PS)

Sd/-
(A.L. SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- DCIT, Circle-22, Kolkata
2. प्रत्यर्थी/ The Respondent- M/s. Deloitte Haskins & Sells
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.