

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2607/Del/2015
(Assessment Year: 1011-12)

Phoenix Legal, 254, 2 nd Floor, Okhla Industrial Estate, Phase-III, New Delhi PAN: AAKFP4391H (Appellant)	Vs.	ACIT, Circle-32(1), New Delhi (Respondent)
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Assessee by :	Shri Ankit Agarwal, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	11/10/2018
Date of pronouncement	21/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is preferred by the assessee against the order of the Commissioner of income tax (appeals) – 18, New Delhi dated 27/3/2015, raising following grounds of appeal..

2. The assessee has raised the following grounds of appeal:-

"GROUND No. I: Addition of other Liabilities amounting to Rs. 10,54,378/- :

1. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) - 18, New Delhi ("the CIT(A)") erred in upholding the action of the Assistant Commissioner of Income Tax - Circle 32(1), New Delhi ("the AO") of making an addition of tax deducted at source payable as on the last date of the previous year amounting to Rs. 10,54,378/- on the alleged ground that as the assessee is following cash system of accounting the same is not allowed as deduction.*

2. *The Appellant prays that the aforesaid addition of Rs. 10,54,378/- be deleted.*

Without Prejudice to Ground No. I:

GROUND No. II:

The Appellant prays that the AO be directed to allow the deduction of Rs. 10,54,378/- in the year in which the aforesaid tax deducted at source is paid.

GROUND No. III: Disallowance of Interest on delayed payment of Service Tax amounting to Rs. 17,830/-:

- 1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO of disallowing interest paid on delayed payment of Service Tax amounting to Rs. 17,830/- on the alleged ground that the same is penal in nature.*
- 2. The Appellant prays that the aforesaid disallowance of Rs. 17,830/- be deleted."*
3. The appellant is a partnership firm engaged in the professional practice of law. It filed its return of income on 14/9/2011 declaring total income of INR 102071626/-. The assessment under section 143 (3) was passed on 3/1/2014 determining the total income at INR 103143834/-. Assessee preferred an appeal before the learned Commissioner of income tax appeals who dismissed the appeal of the assessee and therefore the assessee is aggrieved with the order of the learned CIT - A, has preferred appeal before us.
4. Only two disallowances are involved in the appeal. The 1st disallowance relates to addition on account of other liabilities amounting to INR 1 054378 and 2nd disallowance relate to interest on delayed payment of service tax amounting to INR 17830.
5. Coming to the 1st disallowance, the learned assessing officer noted that assessee firm is following cash system of accounting and is showing income according to that. On perusal of the balance sheet, It was noted that current liability of the assessee includes tax deduction at source payable amounting to INR 1 054378. The learned assessing officer was of the view that tax deduction at source payable should not be allowed, Since it is part of expenditure not actually paid during the relevant previous year. The assessee explained to the learned assessing officer that the above sum represent various tax deducted at source by the assessee which are required to be deposited later on. It was stated that in March 2011 assessee has deducted tax at source of INR 1 054378 which is required to be paid later on and same has been disclosed in the

balance-sheet as a current liabilities. However the learned assessing officer rejected the explanation of the assessee. It was held by him that the expenses on which the above tax has been deducted by the assessee have been claimed during the relevant previous year, whereas fact is that that part of the same expenses amounting to INR 1 054378 have admittedly paid in the next year. As per the copies of the chalan furnished by the assessee , He noted that assessee has made payment of tax deduction at source only on 20/5/2009. He therefore disallowed the above sum.

6. On appeal before the learned CIT appeal, It was submitted that the above issue is squarely covered in favour of the assessee for assessment year 2009 – 10 as similar issue has been decided by the learned Commissioner of income tax appeals in favour of the assessee. The learned CIT – A, stated that when the assessee is following the cash system of accounting the amount of tax deduction at source payable is not allowable under the act as the above expenditure has not been paid by the assessee. Accordingly she confirmed the disallowance.
7. We have heard the rival parties. The simple controversy that arises in this issue is that assessee is following the cash system of accounting and at the time of payment of sum to the recipient, appellant has deducted tax at source, which is outstanding as payable as the same was deducted on the last day of the accounting year and the due date for the payment of such tax has not arrived, whether under the cash system of accounting same is allowable as deduction or not. The claim of the revenue authorities is that such expenditure has not been paid by the assessee and therefore same is not allowable. According to them as assessee is following cash system of accounting such expenditure can be allowed only if the tax deducted at source has been paid by them to the credit of the government. The above contention of the revenue cannot be sustained. Because if the assessee has to pay Rs. 100/- to the recipient necessarily assessee will have to deduct INR 10/- as the tax deduction at source and INR 90 would be payable to the recipient and further INR 10 would be payable to the government of India as tax deduction at source on

account of tax liability of the recipient of the income. The moment the taxes deducted the assessee has discharged the liability towards the expenses incurred by it and the tax deduction at source is required to be deposited by the assessee to the credit of the government on account of the recipient of the income. This is because of the provisions of the income tax act that assessee is liable to deduct the sum as a tax liability of the recipient of the income to be paid to the government of India by the payer. It was also pointed out that in the past and in the subsequent years such accounting treatment of the assessee has been accepted. For assessment year 2009 – 10, similar disallowances were made by the AO which were allowed by the learned CIT – A, and same were not challenged further. Further, for assessment year 12 – 13 onwards the similar claim has been allowed to the assessee. In view of this we reverse the finding of the lower authorities and allow the ground number 1 of the appeal of the assessee with respect to disallowance of INR 1 054378/-.

8. The 2nd ground of with respect to the disallowance of interest expenditure of service tax was not pressed by the assessee at the time of hearing. Therefore, same is dismissed.
9. Accordingly, appeal of the assessee is partly allowed.
Order pronounced in the open court on 21/12/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:21/12/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi