

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'D', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 1870/Del/2012
Assessment Year: 2008-09**

Team HR Services Ltd., H-3, C-Block, Community Centre, Naraina Residential Area, New Delhi. PAN- AACCT 2148K (Appellant)	vs.	DCIT, Circle 16(1), New Delhi. (Respondent)
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Appellant by	Sh. Nageshwar Rao, Advocate and Sh. Purushottam Anand, Advocate
Respondent by	Smt. Naina Soin Kapil, Sr. DR

Date of Hearing	20.11.2018
Date of Pronouncement	08 .01.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of Id. CIT(A)-XI, New Delhi dated 25.01.2012 for the assessment year 2008-09 on the following grounds :

- 1) *That the Appellate Order of the learned Commissioner of Income Tax (Appeals)-XI, New Delhi (here-in-after referred to as the CIT (Appeals)) is bad in law and wrong on facts.*
- 2) *That on the facts and in the circumstances of the case, the learned CIT(A) has erred in enhancing the income of the appellant by Rs.*

19,53,827/- holding that tax was not deducted at source on various components of Managerial Remuneration. As a matter of fact, Fringe Benefit Tax had been paid in respect of certain components and therefore the same were not chargeable to tax again in the hands of employees.

3) That on the facts and in the circumstances of the case, the learned CIT(A) has erred in not allowing write off of TDS amounting to Rs. 21,25,720/- by holding that TDS is a statutory levy of tax and not taxable income without appreciating the fact that TDS is part of income and is taxed by way of grossing up of income and is therefore a recoverable debt.

4) That on the facts and in the circumstances of the case, the leaned CIT(A) has erred in not allowing the claim of Professional Tax of Rs. 5,23,102/- out of Rs. 5,26,693/- under section 43B which was deposited before the due date.

2. The brief facts of the case are that the assessee filed return of income on 30.09.2008 declaring loss of Rs.97,72,598/- and the return was revised on 30.03.2010 declaring total loss of Rs.76,39,310/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of scrutiny proceedings, the Assessing Officer noticed that the assessee has paid managerial remuneration of Rs.19,53,827/- to the directors of the company without deduction of tax at source. In response to the questionnaire issued, the assessee submitted as under :

“The tax auditor’s remarks regarding non-deduction of tax at source of Rs.6,64,106/- on managerial remuneration of Rs.19,53,827/- is not fully proper. The details of amount of Rs.19,53,827/- is enclosed. Many of the components such as medical, entertainment etc. were subject to FBT and hence, were not to be taxed in the hands of the Director”.

“The company has paid fringe Benefit Tax (FBT) on the various components of salary paid to Mr. Abhinav Dhawan (MD) as per details of FBT (enclosed) paid by the company. It is further submitted that disallowance for non-deduction of tax at source is not applicable in the case of salary u/s. 40(a)(ia)”.

3. The Assessing Officer did not accept the submissions of the assessee observing that the components of such payments were as medical, reimbursement, uniform, entertainment expenses, security guard payments, electricity charges and repair to furniture. The Assessing Officer also relied on the report of tax auditors that the assessee had not deducted tax at source to the tune of Rs.6,64,606/- on the payment of managerial remuneration. The tax auditors have reported after verification of records. Accordingly, he disallowed the expenditure claimed as managerial remuneration and added to the total income of the assessee.

4. On further scrutiny of accounts, it was noticed by the Assessing Officer that the assessee has debited in the profit and loss account advance written off amounting to Rs.21,94,951/-. It consists the following details :

Advance written off	Rs.21,25,720/-
Misc. balance written off	Rs.69,231.28

In respect of advance written off, the assessee submitted that this amount of Rs.21,25,720/- was a TDS recoverable in the assessment years 2004-05 & 2005-06, which was irrecoverable and suggested by the auditor for write off

in the current assessment year. The Assessing Officer observed that this written off amount is not satisfying the condition as per section 36(2) of the IT Act and that this amount relates to TDS and is one of the mode of tax payment. As a matter of facts, it is an advance tax payment. Therefore, write off advance tax payment is not covered by the provisions of section 36(2) of the Act. Accordingly, he added a sum of Rs.21,25,620/- of the total income of the assessee.

5. The Assessing Officer also noted that the assessee has debited into the profit and loss account, professional tax payment of Rs.5,26,693/-, but upto the due date of filing of return of income, it was not deposited and the assessee was unable to produce any evidence regarding proof of payment till date of assessment that this amount has already been paid upto the date of filing of return of income. Accordingly, the AO disallowed this claim as per section 43B of the IT Act.

6. Aggrieved from the above order, the assessee appealed before the Id. CIT(A), who after considering the detailed submissions of the assessee upheld the addition made on account of non-deduction of TDS on managerial remuneration and advance written off, but restricted the addition made on account of professional tax paid to Rs.5,23,102/- in spite of challan produced by the assessee before him. Aggrieved, the assessee is in appeal before the ITAT.

7. The ld. AR relied on the submissions made before the authorities below and submitted a paper book containing 124 pages. He submitted that the payments made as remuneration to the directors are subjected to FBT which has been paid at the applicable rate in which FBT provisions are applied. Therefore, it cannot be disallowed in the hands of the company only for non-deduction of TDS. The ld. AR also prayed to send the matter back to the Assessing Officer for verification of nature of payments already considered for the purpose of FBT. In respect of advance written off of Rs.21,25,720/-, he submitted that this tax payment pertains to assessment years 2004-05 and 2005-06 which has already been credited into the profit and loss account and corresponding TDS has not been claimed as tax payment. Still, this amount is appearing in the balance sheet as advance and no any tax benefit has been taken. He also prayed for verification of this matter before the Assessing Officer.

8. Further, in respect of professional tax paid, it was submitted that the challans were not available at the time of assessment but the same was placed before the ld. CIT(A) as additional evidence which has been accepted by him but did not give benefit as per section 43B of the IT Act. Therefore, he urged to send this matter too to the file of Assessing Officer for verification.

9. On the other hand, the ld. DR relied on the order of the Assessing Officer and objected to the request of the Assessing Officer for sending back the matter to the Assessing Officer. The assessee was given ample opportunity during the assessment proceedings for producing the requisite details, but he was unable to produce the same. He also submitted that the TDS has not been deducted on the payments made to the directors which attracts the TDS provision as per section 40(a)(ia) of the Act. Merely Fringe Benefit Tax paid is not sufficient for allowability of expenditure. In respect of advance written off, he submitted that the tax payment cannot be considered as per provisions of section 36(2). Once, the assessee has taken benefit of TDS for discharging of Income-tax liability and if it is appearing as TDS in the balance sheet, it would not be part of the bad debts. Further, it pertains to assessment year 2004-05 and 2005-06, therefore, it would be considered as a prior period expenditure which is not allowable as per section 37(1) for computing current year's taxable income of the assessee. The Assessing Officer has, therefore, rightly made the additions.

10. After hearing both the sides and perusing the entire materials available on record and the orders of the authorities below, we are of the opinion that it will meet the ends of justice if all the three issues involved in this appeal are sent back to the file of the Assessing Officer for deciding them afresh in according with law. The Assessing Officer while deciding the issue shall examine the nature of payments made to the directors whether it was payment in the nature of managerial remuneration or not as per terms & conditions of employment. The assessee is directed to produce relevant bills and vouchers for the payments made. The Assessing Officer shall further

examine whether the amount of Rs.21,25,720/- was considered as income by the assessee in the assessment years 2004-05 and 2005-06 or not and if the above amounts have been adjusted towards the calculation of income tax liability, then the assessee will not be eligible for any benefit and if it is found otherwise, the Assessing Officer shall proceed to accept it as bad debt if the assessee satisfies the conditions of section 36(2). It is further to add that if the assessee has not considered the aforesaid amount as income in assessment years 2004-05 and 2005-06, the Assessing Officer shall examine the issue as per provisions of section 28 of the IT Act. The Assessing Officer is further directed to verify the challan and if it is found in order as per section 43B, the assessee shall be given credit thereof. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, the appeal is allowed for statistical purposes.

11. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 8th Jan. 2019.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 08.01.19

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Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*