

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5097/Del./2018  
Assessment Year 2014-15

Manish Gandhi G-184, Naraina Vihar, New Delhi. <b>AAOPG1427B</b>	vs.	Income Tax Officer, Ward 61(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri V. Raja Kumar, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. DR

Date of Hearing :	18.07.2019
Date of Pronouncement :	01.08.2019

**ORDER**

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-20, New Delhi dated 14.03.2018 for AY 2014-15, challenging the addition of Rs. 8,70,000/- on account of undisclosed professional receipt u/s 69A of the Income Tax Act.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. The office has reported that appeal is time barred by 45 days. The assessee has filed an application for condonation of delay explaining therein that on receipt of impugned order by Counsel Shri Bhushan Khanduja, the documents were passed on to the office staff for the purpose of preparing appeal memo and filing the appeal. However, at the relevant time, the supervisory staff at the Counsel's chamber was occupied with examinations and for this reason timely compliance could not be made. The application is supported by an Affidavit of Mr. Vikas Batra working with M/s Khanduja and Associates supporting the application. On consideration of the explanation of the assessee, I am of the view assessee was prevented by sufficient cause in not filing the appeal within the period of limitation. Therefore, delay in filing the appeal is condoned.

4. Briefly the facts of the case are that assessee is an Advocate and has shown income from business or profession, income from capital gain and income from other sources. The

assessee filed return of income at Rs. 3,14,061 on 25.03.2015. The case was selected for limited scrutiny, however, it was converted into completed scrutiny case because of the huge amount deposited in the bank account of the assessee on which no taxes have been paid. The AO in this background noted that there is a cash deposited in State Bank of India of Rs. 8,50,000/- which assessee claimed to be advanced consultation fees, which was deposited in the bank account. The assessee received the advance fees from Shri Pramod Sharma, Ms. Aarti Jain, Ms. Nimisha Bhagat and Ms. Asha Devi totaling to Rs. 8,70,000/-. The AO noted that the assessee being Advocate has maintained his accounts on cash basis, therefore, the consultancy charges received in financial year relevant to assessment year should have been disclosed in the return of income. In the balance sheet ending 31.03.2014 no such advances reflected. The AO also noted that in the legal profession fees is also received in advance except in some exceptions. Therefore, AO made addition of Rs. 8,70,000/- as undisclosed professional receipt appearing in

the bank account of assessee u/s 69A of the Act. The assessee challenged the addition before Ld. CIT(A) and it was claimed that method of accounting employed by the assessee is mercantile and not cash as stated by the AO. It was further stated that in the balance sheet ending 31.03.2014 assessee has shown amount of Rs. 8,50,000/- on credit side as advance fees. The Ld. CIT(A), however, did not accept contention of the assessee because all the columns in the balance sheet of return of income shows “(zero)”, except cash in hand. The Ld. CIT(A) noted that it is not in dispute that assessee has received Rs. 8,70,000/- as professional fees in assessment year under appeal which should have been shown in the return of income, therefore, appeal of assessee was dismissed.

5. Ld. Counsel for assessee reiterated the submissions made before authorities below and submitted that assessee is following mercantile system of accounting and not cash. He has referred to PB 5 which is statement of affair ending 31.03.2014 in which advance fees have been shown in a sum

of Rs. 8,50,000/-. He has further submitted that the legal matters have settled in the present accounting year and as such, assessee would pay the tax on the amount in question in AY 2020-21. He has submitted that assessee has paid Rs. 24,000/- and 72,200/- recently in AY 2020-21 as advance tax on such advance receipts, copies of the same are filed on record. He has submitted that assessee would disclose Rs. 8,70,000/- as income in AY 2020-21 and, as such, it is only a tax neutral exercise. On the other hand, Ld. DR relied upon the orders of the authorities below.

6. I have considered the rival submissions. The assessee has filed copy of the statement of affair in which advance fees have been shown in a sum of Rs. 8,50,000/-. According to assessee the advance fees was received from four parties and their matters are now settled in current financial year. Assessee, therefore, made a statement in the court that amount in question i.e. Rs. 8,70,000/- would be tendered for taxation in AY 2020-21. The assessee has also paid advance

tax on the same amount for AY 2020-21 in a sum of Rs. 96,200/-. These facts clearly support that assessee received the amount in question as advance from the parties. Assessee denied to have maintained cash system of accounting, therefore, there was no justification to make addition of the impugned amount in assessment year under appeal. It is submitted that tax would remain same in assessment year under appeal as well as in AY 2020-21. Therefore, it would not make any difference for the Revenue. I accept the explanation of the assessee that amount in question was advance which is now tendered for taxation in AY 2020-21. Therefore, it is merely a tax neutral exercise. It is not a case as if the Revenue has been deprived of any tax. The Hon'ble Supreme Court in the case of CIT vs. Excel Industries Limited 358 ITR 295 held that "there is no dispute that in subsequent accounting year, the assessee did made import and did derive benefits under the advance license and duties entitlement pass book and paid the tax, therefore, it is not as if the Revenue has been deprived of any tax. We are told that rate of

tax remain the same in present assessment year as well as in subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at the best, made for minor tax effect". The Hon'ble Supreme Court in the case of CIT vs. Realist Builders & Services Limited 307 ITR 202 has held that "Assessing Officer must give facts and figures that the impugned method of accounting adopted by the assessee results in under estimation of profits, for changing the method of accounting u/s 145 of the Act, otherwise, it will be presumed that the entire exercise is Revenue neutral". Considering the facts of the case and that assessee has paid advance tax on the amount in question in AY 2020-21 and undertaken to declare the amount for taxation, I am of the view that Revenue is not going to lose anything. It is merely a tax neutral exercise. I, therefore, do not find any justification to doubt the explanation of the assessee. In this view of the matter, I set aside the orders of the authorities below and delete the addition of Rs. 8,70,000/-.

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

Order pronounced in the open Court.

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated 01.08.2019

\*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

Date of dictation	18.07.2019
Date on which the typed draft is placed before the dictating Member	19.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	01.08.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	01.08.2019
Date on which the fair order comes back to the Sr. PS/PS	01.08.2019
Date on which the final order is uploaded on the website of ITAT	01.08.2019
Date on which the file goes to the Bench Clerk	01.08.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	