

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.5069/Del/2016
Assessment Year: 2011-12**

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| M/s Hall Offshore Limited, 25, Bazar Lane, Bengali Market, New Delhi. PAN: AAACH3144B Appellant | vs | ACIT, Range-12, New Delhi. Respondent |
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Assessee by: Shri Somi Aggarwal, Advocate
Department by: Shri Amit Katoch, Sr. DR

Date of Hearing: 13.08.2019
Date of Pronouncement: 03.09.2019

ORDER

PER NARASIMHA K. CHARY, JM

Aggrieved by the order of the Commissioner of Income-tax(Appeals) -4, New Delhi{"CIT(A)"} for Assessment Year 2011-12, assessee preferred this appeal on the following grounds:

“1. That having regard to the facts and circumstances of the case, ld. CIT(A) has erred in law and on facts in not deleting the disallowance of Rs.39,38,400/- made by ld. AO u/s 40(a)(i) and further erred in directing the ld. AO to verify the claim and that too without observing the principles of natural justice.

2. That in any case and in any view of the matter, action of ld. CIT(A) in not deleting the disallowance of Rs.39,38,400/- made by ld. AO u/s 40(a)(ia) is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, ld. CIT(A) has erred in law and on facts in confirming the action of ld. AO in making addition of Rs.11,63,500/- on account of interest income.

4. That the appellant craves the leave to add, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. At the outset, at the time of arguments, ld. AR submitted that Ground No.4 is general in nature, and that they are not pressing Ground No.3. Therefore, what remains for our adjudication are ground Nos. 1 & 2 in respect of Rs.39,38,400/- by making disallowance u/s 40(a)(ia) of the Income-tax Act, 1961 ('the Act'). On this aspect assessment order speaks that during the course of assessment proceedings, ld. AO found that the assessee made short deduction of TDS of Rs.7,87,680/- on foreign payments, deducted TDS at 4.22% instead of 20% and, therefore, the total payment made by the assessee to the foreign party to the tune of Rs.49,92,585/- proportionately was disallowed which comes to Rs.39,38,400/- u/s 40(a)(ia) of the Act.

3. In appeal, ld. CIT(A) confirmed the same. Assessee is, therefore, before us challenging the same and placing reliance on the decision of the Hon'ble Calcutta High Court in the case of S.K. Tekriwal (2013) 260 CTR 73 (Cal) followed by the coordinate benches of this Tribunal in the case of ITO vs Quatro Mortgage Solution P. Ltd. for Asstt. Year 2010-11 in ITA No 2819/Del/2015 by order dated 25.1.2019 and for AY 2011-12 in ITA No. 5044/Del/2015 by order dated 18.8.2017.

4. It is an admitted fact that it is not a case of non-deduction of TDS but it is a case of short deduction of TDS on foreign payments. Instead of

20% as opined by the Id. AO, assessee effected the TDS at 4.22% on the payment of Rs.49,92,585/-.

5. In the case of S.K. Tekriwal (supra), Hon'ble High Court held that in the case of shortfall in deduction due to any difference of opinion as to the taxability of any item or nature of payments falling under various TDS provisions, the proper course for the revenue is to declare the assessee as an assessee in default u/s 201 of the Act but no disallowance can be made by invoking the provisions of Section 40(a)(ia) of the Act. In these circumstances, while respectfully following the said decision, we hold that it is not open for the revenue to disallow any amount u/s 40(a)(ia) of the Act and the addition is directed to be deleted.

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

Order pronounced in the Open Court on 3rd September, 2019.

Sd/-

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 3rd September, 2019

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |