

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1122/Del/2017
(Assessment Year: 2013-14)

Associated Law Advisers, Antriksh Bhawan, 6 th Floor, 22, Kasturba Gandhi Marg, New Delhi PAN: AAFA8774F	Vs.	ACIT, Circle-63(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri C. S. Aggarwal, Sr. Adv
Revenue by:	Shri Arun Kumar Yadav, Sr. DR
Date of Hearing	02/07/2019
Date of pronouncement	11/09/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-20, New Delhi dated 13.01.2017 for the Assessment Year 2013-14.
2. The assessee has raised the following grounds of appeal:-
 - "1. That the learned Commissioner of Income-tax (Appeals)-20, New Delhi has erred in sustaining disallowance of Rs. 2,49,381/- representing the amount of tax deducted at source in March, 2013 from expenditure towards rent, professional fess etc. despite the fact that the tax was paid to the Central Government before the due date for filing the return of income for the assessment year 2013-14 as required under section 43(l)(ia) of the Income-tax Act, 1961.
 - 1.1 That the learned Commissioner of Income-tax (Appeals)-20, New Delhi has erred in confirming the aforesaid disallowance on the ground that section 145(1) of the Income-tax Act, 1961 prevails over section 40(a)(ia) of the said Act.
 - 1.2 That the learned Commissioner of Income-tax (Appeals)-20, New Delhi has erred in rejecting the alternative claim of the appellant that the said sum of Rs. 2,49,381/- is deductible under section 43B of the Income-tax Act, 1961.
 2. That the learned Commissioner of Income-tax (Appeals)-20, New Delhi has erred in not directing the learned Assessing Officer to give interest under section 244A of the Income-tax Act, 1961 up to the date on which refund is granted.

3. *It is thus prayed that the addition of the aforesaid sum of Rs. 2,49,381/- may kindly be deleted and directions may kindly be given for payment of interest under section 244A till the date on which refund is granted.”*

3. Only issue involved in this appeal is with respect to the deduction of INR 2 49381 representing tax deducted at source from rent, professional fees et cetera and paid to the central government before the due date of the filing of the return of income disallowed by the learned assessing officer.
4. The brief facts of the case shows that assessee is a partnership firm deriving income from the profession of law under the head business or profession and income from other sources. It is following cash method of accounting. It filed its return of income on 28/9/2013 at Rs. 2935080/-. The assessment u/s 143 (3) of the act was passed at Rs. 6666930/- . Assessee on 3/12/2015 filed an application u/s 154 of the act which was rectified. Thus this order is passed. The assessing officer noted that in the balance-sheet the assessee has shown statutory liability of INR 2 49381/- on account of tax deduction at source payable. It was noted that this is payable as a part of the expenses which the assessee has claimed as allowable expenditure in his profit and loss account. As the assessee is following cash system of accounting, whereby only payments which have been made during the year can be claimed as deductible expenditure, therefore, the learned assessing officer was of the view that above tax deduction at source, which has not been paid by the assessee, out of the various expenditure cannot be allowed as a deduction of expenses. Thus he disallowed the above sum of INR 2 49381/-. He also rejected the contention of the assessee that in earlier years the assessing officer has allowed the deduction in respect of tax deducted at source even though it was not paid in the financial year but paid before the due date of filing of the return of income. It was further stated that outstanding tax deduction at source liability is not on account of the persons to whom the expenses have been paid but is on the account of the liability of the assessee himself. By collecting/deducting tax at source the assessee discharges, the recipient of the income from the payment of the above tax and above sum is collected by the assessee from them to be deposited on their behalf to the credit of the government. Consequently the learned AO made the above addition, which

was challenged before the learned CIT – A. The learned CIT – A noted that assessee is following the cash system of accounting and therefore whatever is paid by the assessee can only be allowed as a deductible expenditure. As these expenses have not been paid to the extent of tax deduction at source it cannot be allowed as an expenses. The learned CIT – A further justify the above disallowance holding that as the appellant itself shows the income which has been received by the assessee only even though the income has accrued to the assessee. Therefore, the addition made by the learned AO was confirmed.

5. Therefore, assessee aggrieved with the order has preferred this appeal before us. The learned authorised representative reiterated the same submissions as made before the learned lower authorities. It was further stated that the above tax deducted is deposited in time by the assessee. He further submitted that tax deduction at source is the liability of the assessee and the recipient of the income has been discharged. He therefore submitted that the above disallowance made by the lower authorities deserves to be deleted.
6. The learned departmental representative reiterated the findings of the lower authorities and stated that as assessee is following the cash system of accounting, the above tax deduction at source has not been paid to the credit of the government, therefore it has correctly disallowed by the lower authorities.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, the assessee is following the cash method of accounting and therefore generally whatever is the cash outflow, the assessee is entitled to claim the same as a deductible expenditure. In the present case the assessee has made cash payment to the various parties after deducting tax at source. The portion of the amount paid to them was already allowed to the assessee as a deductible expenditure. However, the issue is whether the amount of tax deducted at source from the payment made to the recipient of such income can be said to be the amount of expenditure incurred by the assessee and paid during the year and therefore it is allowable to the assessee as business expenditure. We have carefully considered the rival contention and found that according to the

provisions of section 198 of the income tax act, tax deducted in accordance with the provisions of the income tax act is deemed to be the income received by the recipient of the above income. Therefore, according to the income tax act itself the above amount of tax deducted at source is deemed to have been received by the recipient of the income. Thus, it cannot be said that the assessee has not paid the amount of tax deducted at source to the recipient of the income from whose payments the tax have been deducted. Further tax deduction at source is a liability cast upon the assessee to deduct the sum from the recipient of such income. In fact the moment assessee deducts the tax at source from the sums paid to the other person it becomes the liability of the assessee who can be held to be an assessee in default for the above sum as well as liable to pay interest and penalty also. Thus, the amount of tax deducted at source is always considered as the sum paid by the assessee on behalf of the recipient of the income. Therefore, it cannot be said that the above sum has not been paid by the assessee even while following the cash system of accounting. Further the action of the learned CIT – A in invoking the provisions of section 40 (a) (i) is also devoid of any merit in view of the decision of the honourable Supreme Court in 404 ITR 654 where the assessee has paid the above tax deduction at source to the credit of the government within the prescribed time. Accordingly the appeal of the assessee on the solitary issue of the disallowance of sum of INR 2 49381/- is allowed.

8. In the result ITA number 1122/Del/2017 filed by the assessee for assessment year 2013 – 14 is allowed.

Order pronounced in the open court on 11/09/2019.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:11/09/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi