

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH AHMEDABAD**

**BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA NO. 1983/AHD/2017
AY: 2013-14**

**ITA NO. 1984/AHD/2017
AY: 2014-15**

DCIT, Cir.4(2), A/209, A Wing, 2 nd Floor, Pratyaksh Kar Bhavan, Nr. Politechnic Pancjararapole, Ambawadi, Ahmedabad-380 015 (Appellant)	vs	Deloitte Haskins & Sells, 3 rd Floor, Heritage, Nr. Gujarat Vidyapith, Off Ashram Road, Usmanpura, Ahmedabad. (Respondent)
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Appellant by: Shri Percy Pardiwala, Niraj Sheth, ARs

Respondent by: Shri S.K. Dev, Sr. DR

Date of hearing : 28.06.2019

Date of pronouncement: 01.10.2019

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

Both the appeals are preferred by the Revenue and involve identical issues. They were heard together and they are being disposed of through this common order for the sake of convenience.

2.0 The brief facts of the case are that the assessee is a professional firm carrying out the profession of chartered accountancy. The return of income for assessment year 2013–14 was filed declaring a total income of Rs. 3,82,44,800/-. Initially, the return was processed under section 143 (1) of the Income Tax Act, 1961 (hereinafter called “the Act”). Subsequently, the case was selected for scrutiny under CASS guidelines. The assessment was completed at an income of Rs. 6,85,91,667/- after making the following disallowances/additions –

(i) Disallowance of interest expenditure – Rs. 2,19,85,395/-

(ii) Disallowance out of subscription payments – Rs. 79,37,189/-

(iii) Disallowance of interest on service tax Rs. 4,24,283/-.

2.1 The assessee approached the Ld. first appellate authority against the said disallowances. The Ld. Commissioner of Income Tax (Appeals) gave relief to the assessee in respect of all the three disallowances and deleted the additions. Now, the Department is before the Tribunal and has challenged the action of the Ld. first appellate authority in deleting the disallowances made by the assessing officer.

2.2 In assessment year 2014–15, the return of income was filed declaring an income of Rs. 6,60,19,600/-. The assessee’s

return was initially processed under section 143 (1) of the Act and the case was subsequently selected for scrutiny under the CASS guidelines. The assessment was completed at an income of Rs. 10,96,56,092/- after, *inter alia*, making the following disallowances –

(i) Disallowance of interest expenses – Rs. 2,27,87,141/-
(Identical to assessment year 2013-14)

(ii) Disallowance out of subscription payments - Rs. 80,22,170/-
(Identical to assessment year 2013-14)

(iii) Addition in respect of payments made to retired partners deducted from professional receipts – Rs. 1,28,27,181/-
(New issue in this assessment year)

2.3 The assessee's appeal before the Ld. first appellate authority was successful in this assessment year also in as much as the Ld. first appellate authority allowed relief to the assessee on all the three issues under dispute by deleting the aforesaid disallowances. Now, the Department has approached the Tribunal and has challenged the deletion of the disallowances by the Ld. first appellate authority.

3.0 The Ld. senior departmental representative submitted that the background relating to the disallowance of interest by

the assessing officer was that during assessment year 2013–14, the assessee firm had claimed interest and finance charges of Rs. 2,99,95,830/- and on the other hand had given interest free loans and advances of Rs. 18,32,11,606/- to its associate concern M/s Deloitte Touche Tohmatsu India Pvt. Ltd (DTTIPL). It was further submitted that during the course of assessment proceedings, the assessing officer had issued show cause notice requiring the assessee to justify as to why proportionate expenses with respect to the expenditure on interest should not be disallowed. Thereafter, after duly considering the reply of the assessee the assessing officer proceeded to disallow a sum of Rs. 2,19,85,392/- by applying 12% interest rate on advances of Rs. 18.32 crores to DTTIPL. It was further submitted that a similar disallowance was made in assessment year 2014–15 by the assessing officer. The Ld. senior departmental representative submitted that this interest had been rightly disallowed by the assessing officer but the Ld. CIT (Appeals) had incorrectly deleted the disallowance. The Ld. senior departmental representative submitted that the Ld. first appellate authority had failed to appreciate the fact that interest was also being paid on partners' capital which was being claimed as a deduction. It was submitted

that it was a wrong observation on the part of the Ld. first appellate authority that partners' capital is not borrowed capital. It was submitted by the Ld. senior departmental representative that provisions of section 36 (iii) of the Act would also apply to interest on capital. The Ld. senior departmental representative further highlighted the observation of the assessing officer that it could not be demonstrated by the assessee that the transaction with DTTIPL was in the nature of a business transaction. It was also submitted that the assessee would not establish the commercial expediency in giving interest free loans to its associated concern.

3.1 With respect to the second issue in dispute before us which is regarding the deletion of disallowance out of subscription expenses, the Ld. senior departmental representative submitted that the assessee could not give any specific details regarding the services received from the parties to whom the subscription fee had been paid. It was submitted that in absence of clear description of the services received, the assessing officer had no option but to make a disallowance. It was submitted that it could not be established that these expenses had been incurred wholly and exclusively for the

purposes of business. It was submitted that 25% disallowance out of subscription expenses in both the assessment years was a reasonable disallowance given the facts and circumstances of the case.

3.2 With respect to the third issue in dispute in assessment year 2013 – 14 being disallowance of interest on service tax, the Ld. senior departmental representative placed reliance on the findings and observations of the assessing officer.

3.3 The Ld. senior departmental representative submitted that in assessment year 2014 – 15 two issues were identical to the two issues in assessment year 2013 – 14 viz. disallowance out of interest expenditure and disallowance out of subscription and for the sake of brevity the arguments were not being repeated.

3.4 It was further submitted that in assessment year 2014 – 15 another issue being challenged by the Department was the deletion of disallowance of Rs. 1,28,27,816/- being payment made to the retired partners and deducted out of the professional fees. It was submitted that the facts leading to the disallowance of this amount was that during the year under consideration the assessee had made the payment of Rs. 1,28,27,186/- to retired

partners. It was submitted that this payment was in the nature of capital outgo and the payments to the retired partner are to be made only out of the capital balance of the partners. It was further submitted that the assessee firm had deducted the payment from the current income of the partnership firm which was not permissible. It was further submitted that the assessee was not entitled to claim this payment as deduction because no payments to the partners can be made which are over and above the remuneration and interest as prescribed in the partnership deed.

4.0 In response, the Ld. authorised representative submitted that as far as the issue of disallowance of interest was concerned, it was pertinent to note that that both the parties were paying income tax at the same rate and, thus, there was no loss of revenue to the exchequer. It was further submitted that the advance paid by the assessee has been adjusted against the services received subsequently as was evident from the observations and findings of the Ld. first appellate authority in this regard. It was further submitted that it is not the Department's case that the funds have been diverted for any personal benefit of the directors. The Ld. authorised

representative placed reliance on the judgement of the Hon'ble Apex Court in the case of SA Builders reported in 288 ITR 1 (SC) as well as on another judgement of the Hon'ble Apex Court in the case of Hero Cycles for the proposition that business expediency has to be judged from the view point of the businessman. It was further emphasised that no similar disallowance had been made in earlier assessment years. It was submitted that the Ld. first appellate authority had rightly deleted the disallowance in both the assessment years.

4.1 With respect to the second issue in dispute, i.e. the disallowance pertaining to subscription payments, it was submitted by the Ld. authorised representative that evidently this disallowance was in the nature of an *ad hoc* disallowance. The Ld. authorised representative submitted that the ITAT benches of Kolkata and Delhi have deleted similar disallowances in assessee's group concerns. It was further submitted that in assessment year 2010 – 11 also a similar disallowance had been made which had been deleted by the Ld. first appellate authority and the Department had not preferred further appeal against this deletion by the Ld. CIT (Appeals) and, thus, it was apparent that the Department had accepted this position.

4.2 With respect to the issue regarding interest on delayed payment of service tax it was admitted that the nature of interest was compensatory in nature and in this regard reliance was placed on the judgement of the Hon'ble Gujarat High Court in the case of Kaypee Mechanical India (P) Ltd reported in (2104) 45 taxmann.com 363.

4.3 With respect to the Revenue's challenge regarding the payment made to the retired partners, it was submitted that the confirmations of the retired partners are on record stating that they have offered this income to tax in their respective returns. Reliance was also placed on the order of ITAT Mumbai bench in the case of C.C. Chokshi & Co. wherein an identical payment made to the retired partners was held to be allowable. It was submitted that the Hon'ble Bombay High Court had dismissed the Department's appeal in this case and, therefore, the same was a binding precedent. Reliance was also placed on another judgement of the Chennai Bench pertaining to a related concern of the assessee where an identical disallowance was held to be allowable. Reliance was also placed on another order of the ITAT Mumbai Bench in the case of Mulla & Mulla & Craigie wherein an identical issue was decided in favour of the assessee.

4.4 The Ld. authorised representative pleaded that the Ld. first appellate authority had rightly deleted all the disallowances and the Department's appeals deserved to be dismissed.

5.0 We have heard the rival contentions and have also perused the material on record. We now take up the issues one by one for adjudication.

5.1 The first issue for our consideration, which is common in both the assessment years under consideration, is the dispute regarding proportionate disallowance of interest on advances to assessee's related concern DTTIPL. The assessing officer had disallowed the interest mainly on the ground that the assessee firm had used interest-bearing funds for the purpose of providing interest free advances. The AO has also observed that the assessee has not provided evidences which could prove that the transaction with DTTIPL were in the nature of a business transaction and further the commercial expediency was also not established with respect to interest free advances. The Ld. CIT (Appeals), while deleting the disallowance has noted that the assessee firm and DTTIPL are members of global network of professional firms carrying on similar profession and that the objective of the global network was to ensure cooperation

amongst members and thereby enhance their respective capability to carry on professional practice. It has been noted by the Ld. first appellate authority that the assessee has demonstrated that subsequently DTTIPL has raised debit notes on the assessee for services rendered and, thus, it has been amply demonstrated that DTTIPL and has provided services of its resources against which the advances made by the assessee were adjusted. It has also been observed by the Ld. first appellate authority that there was commercial expediency in giving advance to DTTIPL as both the assessee firm and DTTIPL were in the same line of profession. The Ld. first appellate authority has reached a conclusion that there was a business relationship between the assessee and DTTIPL and, therefore, the advances given by the assessee firm could not be said to be not having any link with the assessee business and, therefore, proportionate disallowance of interest was not warranted. Further the Ld. first appellate authority has also noted that it cannot be said that the assessee does not have a continuous business relationship with DTTIPL. The Ld. CIT (Appeals), while deleting the disallowance, has also placed reliance on the ratio of judgement of the Hon'ble Apex Court in the case of SA Builders (supra) wherein the

Hon'ble Apex Court had held that the expression 'commercial expediency' is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. In this case, the Hon'ble Apex Court went on to hold that once it is established that there is nexus between the expenditure and the purpose of business, the revenue cannot assume the role to decide as to how much is reasonable expenditure. Apart from this, the Ld. first appellate authority has also noted that the assessee firm had its own funds which were more than the amount of advances given to DTTIPL and, therefore, there was no occasion for the assessing officer to make disallowance on account of interest. While deleting the disallowance, it has also been noted by the Ld. First appellate authority that both the concerns pay tax at the same rates and, therefore, there was no loss of revenue. We are in full agreement with these observations and findings of the Ld. first appellate authority in this regard. In the proceedings before us, the Ld. senior departmental representative could not point out if there was any perversity in these factual findings recorded by the Ld. first appellate authority. Therefore, in our considered opinion, the disallowance with respect to interest in both the years under

consideration has been rightly deleted by the Ld. first appellate authority and we find no reason to interfere on this issue. Accordingly, we dismiss the grounds relating to disallowance of interest in both the years under appeal.

5.2 Coming to the second issue in dispute before us i.e. deletion of the disallowance of 25% of the total subscription expenses, it is seen that the reason for the assessing officer for making the disallowance was that the same were, in his opinion, excessive and not wholly and exclusively incurred for the purpose of the professional activities of the assessee. The assessing officer has noted that specific details regarding the services received were not available. However, the Ld. first appellate authority, while deleting the disallowance, has noted that the assessee firm contributes by way of subscription fees to Deloitte Global Services Holding Ltd and Deloitte Shared Services India (Pvt.) Ltd which is a global network of International Association of firms and companies rendering professional services. The Ld. CIT (Appeals) had accepted the assessee's contention that the assessee's firm being a member of this global network and having 'Deloitte' in its name brings in professional work in the form of reference by other member firms. The Ld. CIT (Appeals) has also

noted that a similar disallowance had been made in assessment year 2010 – 11 which had been deleted by the Ld. first appellate authority. We also note that the Department did not file any further appeal against this deletion made by the Ld. CIT (Appeals) in assessment year 2010 – 11. We also note that an identical issue had come up before ITAT Delhi bench in assessment year 2009 – 10 and vide order dated 23/10/2018 in the case of assessee's related concern, ITAT Delhi bench, in the case of Deloitte Haskin & Sells vs. ACIT in ITA No. 2927/Del/2013 had deleted an identical disallowance after duly considering similar favourable decision of Kolkata bench in assessee's related concern in the case of Deloitte Haskins & Sells in ITA Nos. 587 & 588/Kol/2016 for AY 2010-11 and 2011-12 vide order dated 11/07/2018. Although the Ld. senior departmental representative has argued vehemently against the deletion of the said disallowance by the Ld. CIT (Appeals), he could not bring to our notice any contrary judgement in this regard. We also note that the disallowance in this respect is an *ad hoc* disallowance and, therefore, on identical facts and respectfully following the orders of the co-ordinate benches as aforesaid, we have no hesitation in upholding the order of the Ld. CIT (Appeals) on this

issue also. Accordingly, we dismiss the grounds raised by the revenue on this issue under both the years under consideration.

5.3 The next issue for adjudication in assessment year 2013 – 14 pertains to interest on delayed payment of service tax. In this regard it is seen that the Ld. first appellate authority, while deleting the disallowance, has placed reliance on certain judicial precedents viz. the Hon'ble Apex Court in the case of Maha Lakshmi Sugar Mills company versus CIT reported in 123 ITR 429, Prakash Cotton Mills versus CIT reported in 201 ITR 684 and Hon'ble Gujarat High Court in the case of CIT versus Kaypee Mechanical India (Private) Limited reported in (2014) 45 taxman.com 363. The Ld. CIT (Appeals) has relied on the aforesaid judgements to reach the conclusion that the expenditure on account of interest on service tax has the same character as service tax. The Ld. CIT (Appeals) has noted that that the assessee's claim is covered by the aforesaid judicial precedents and we are in complete agreement with the observations and findings of the Ld. first appellate authority in this regard. The Ld. senior departmental representative has also not brought any judgement to the contrary in this regard. Therefore, we find no reason to interfere with the findings of the

Ld. first appellate authority on this issue who has followed the settled judicial precedents as stated above. We, accordingly, dismiss the ground raised by the Department.

5.4 The only issue remaining for adjudication now is the dispute regarding payment made to the retired partners and this issue is in dispute before us in assessment year 2014 – 15. The Ld. authorised representative has placed reliance on a number of judicial precedents on the issue wherein it has been held that payments made to retired partners are an allowable expenditure. We find that an identical issue had come up before ITAT Chennai bench in the case of a related concern of the assessee in assessment year 2011 – 12 and the ITAT Chennai bench in ITA No. 2077/MDS/2016, vide order dated 25/11/2018, after relying on an order of ITAT Mumbai Bench in the case of CC Chokshi & Co. for assessment years 2000 – 01 and 2001 – 02 had held the issue in favour of the assessee. The Hon'ble High Court of Bombay in the case of DCIT versus Wadia Ghandy & Company, vide judgement dated 12/02/2019, also upheld an identical order of ITAT Mumbai and noted that payment to the partner would amount to diversion of income at source by overriding title. The court went on to observe that it was not necessary to refer to

long line of decisions where a similar view in similar circumstances had been taken. The undisputed facts are that the partnership firm envisaged payment to a outgoing partner on the basis that the partner would have rendered service during his tenure as a partner of the firm but could not enjoy the fruits thereof on account of the fact that the work having remained incomplete, the concerned client had not been billed for the work already done. The Hon'ble Bombay High Court held that in similar circumstances, the courts have held that payment to the partner would amount to diversion of income at source by overriding title. The Ld. senior departmental representative could not point out any judgement to the contrary on this issue as well and, therefore, in view of the ratio of the decisions as aforesaid and as relied upon by the Ld. authorised representative, on identical facts, we find no hesitation in agreeing with the findings recorded by the Ld. first appellate authority. Accordingly, the ground raised by the Department does not succeed

6.0 In the final result both the appeals filed by the Department stand dismissed.

Order pronounced in the open court on 01.10.2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER *TRUE COPY*

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

DATED: 01st October, 2019

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Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

By Order

Asstt. Registrar
ITAT, New Delhi