

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT BEENA A. PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2819/Del/2015
(Assessment Year: 2010-11)

ITO, Ward-20(3), New Delhi	Vs.	Quatro mortgage Solution Pvt. Ltd, 24-C Block Basement, Community Centre, Janakpuri, New Delhi-58 Pan: AAACQ1451E
(Appellant)		(Respondent)

C. O. No. 43/Del/2016
(In ITA No. 2819/Del/2015)
(Assessment Year: 2010-11)

Quatro mortgage Solution Pvt. Ltd, 24-C Block Basement, Community Centre, Janakpuri, New Delhi-58 Pan: AAACQ1451E	Vs.	ITO, Ward-20(3), New Delhi
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soin Kapil, Sr. DR
Assessee by:	Smt lalitha Krishnamurty, CA Ms. Vidhi Aggarwal, CA
Date of Hearing	23/01/2018
Date of pronouncement	25/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is the appeal filed by the Id AO as well as the cross objection filed by the assessee against the order of the Id Commissioner of Income Tax (Appeals)-7, New Delhi dated 02/12/2015 for Assessment Year 2010-11.
2. The grounds of appeal raised by the revenue is as under:-

3. The grounds of appeal raised by the assessee in cross objection is as under:-
4. The brief facts of the case are that the assessee is a company who filed its return of income on 05/10/2010 at nil income. The assessee is engaged in providing back office mortgage processing services to their client being lenders, financial institutions, and law firms. The loan processing is automated through computer software. During the year, the assessee has incurred expenditure under the head allocable Capex Cost for the use of assets such as furniture and fixture, leasehold improvements, air-conditioning unit, DG sets, gym equipments, CCTV etc. The assessee stated that above charge is recovered by its holding company on a fixed rate per annum, par seat basis. The assessee has deducted tax at source on the above payments @2% u/s 194 I of the act considering it as payment for rent of plant and machineries. The Id AO was of the view that the above amount is in the nature of rent of furniture and therefore under section 194I it attracts TDS @ 10% and not @2%. Therefore, the Id AO disallowed sum u/s 40 (a) (ia) of the act. Out of total expenditure incurred of Rs. 17191605/- proportionate disallowances was worked out at Rs. 1, 37, 53,284/-. During the year the assessee also paid interest on service tax for Assessment Year 2007-08 and 2008-9 amounting to Rs 1105515/- which was disallowed by the Id AO considering it as prior period expenses. Further, addition of Rs. 333999/- was made as unexplained cash credit u/s 68 of the Act. Consequently, the assessment under section 143(3) of the Act was passed on 21/3/2013 making certain other additions of Rs. 38147971/-. The assessee challenged the same before the Id Commissioner of Income Tax (Appeals) who deleted the impugned addition therefore the revenue is in appeal before us.
5. Ground No. 1 of the appeal is with respect to the deletion of the addition of Rs. 13753281/- because of lower tax deduction at source. The contention of the assessee is that it has paid the rent for the work station having computer which are used by the employees as a tool in the

- assessee's business and therefore they fulfill the function of plant in the business activity and hence as it is a rent for the plant and machinery the TDS is required to be deducted under section 194I of the Act @ 2%. The AO was of the view that the above rent is for the furniture and hence under section 194I tax was required to be deducted @ 10%. The Id Commissioner of Income Tax (Appeals) deleted the disallowances relying on the decision of the Hon'ble Kolkata High Court in the case of the CIT Vs SK Tekriwal wherein it has been held that with regard to the shortfall it cannot assume that there is a default of failure to deduct tax at sources.
6. The Id DR relied upon the order of the Id AO, whereas the Id AR vehemently submitted that the issue is also raised in the cross objection of the assessee that tax is not required to be deducted @ 10% but @ 2%. She insisted upon the issue that this bench should first decide whether on the payment made by the assessee tax is required to be deducted @ 10% as contested by the assessee or @ 2% as contested by the Id AO.
 7. We have carefully considered the rival contentions and find that the issue is squarely covered in favour of the assessee, so far as the disallowances under section 40(a) (ia) of the Act is concerned by the decision of the Hon'ble Kolkata High Court in case of CIT vs SK Tekriwal 361 ITR 432 as well as by the decision of coordinate bench in case of the assessee itself for the Assessment Year 2011-12, wherein the identical issue is decided and disallowances is deleted. In view of the above ground No. 1 of the appeal of the revenue is dismissed.
 8. As the cross objection of the assessee is on the issue that tax should have been required to be deducted by the assessee @ 10% as per the contention of the Id AO and @ 2% as claimed by the assessee. We are not adjudicating appeal against the order of the Id AO under section 201 of the Act where the assessee is asked to pay shortfall of tax deduction at source or failure to deduct the tax at source. The issue before us is limited to the disallowances under section 40(a) (ia) of the Act. As stated by the Id AR that no action has been taken by the Id AO under section 201(1) and (1A) of the Act in the impugned Assessment Year, Therefore,

the ground raised by the assessee in the cross objection are hypothetical and when we have already deleted the addition in the case of the assessee, we do not find it appropriate at this stage to decide it. Assessee is at liberty to raise such question at the appropriate stage but not in this appeal where the assessee has succeeded based on the decision of the co-ordinate bench in assessee's own case. Accordingly, cross objection of the assessee is dismissed.

9. The second ground of appeal of the revenue is against the deletion of the addition of Rs. 1105515/- because of interest on service tax considered as prior period expenses by the assessee.
10. The Id DR submitted that as the interest relates to the Financial Year 2007-08 and 2008-09, it is prior period expenditure and cannot be allowed to the assessee as deduction.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities. The Id CIT (A) has deleted the above disallowances holding that interest on service tax has crystallized during the year and therefore it is allowable as expenditure during the year. We confirm the finding of the Id Commissioner of Income-Tax (Appeals) and dismiss Ground No. 2 of the appeal of the revenue.
12. Ground No. 3 of the appeal is with respect to the addition of Rs. 333999/- because of unexplained cash credit u/s 68 of the Act. The facts emerging from the record shows that the appellant company has outstanding balance of its associated companies as sundry creditors of Rs. 37981917/- for which assessee filed confirmation of that party. Further, the Id AO has made the addition of Rs. 333999/- which is not appearing in the balance sheet of the assessee.
13. The Id DR relied upon the orders of the Id AO whereas the Id AR vehemently stated that there is no such outstanding in the books of the assessee.
14. We have carefully considered the rival contentions and perused the orders of the lower authorities. Whatever credit balance appearing in the books of account of the assessee, the assessee substantiating the same by filing a confirmation letter of the party. The Id DR also could not show

how the Id AO has worked out the addition of Rs. 333999/-. In view of the above facts, we do not find any reason to interfere with the order of the Id Commissioner of Income Tax (Appeal). Accordingly, we confirm his finding. Ground number 3 of The Appeal of the revenue is dismissed.

15. In the result, appeals filed by the revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 25/01/2019.

-Sd/-

(BEENA A. PILLAI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 25/01/2019

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi