

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 2705/DEL/2017
[Assessment Year: 2012-13]

Harish N. Salve
6E, White House
10, Bhagwan Dass Road,
New Delhi -110 001

Vs.

The A.C.I.T,
Circle 61(1),
New Delhi - 110 002

PAN: AHFPS 7386 B

[Appellant]

[Respondent]

Date of Hearing : 06.02.2020
Date of Pronouncement : 06.02.2020

Assessee by : Shri Rohit Garg, Adv
Shri Sachit Jolly, Adv

Revenue by : Ms. Sushma Singh, CIT-D.R.

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 20, New Delhi dated
31.03.2017 pertaining to assessment year 2012-13.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in confirming the disallowance of Rs. 19,53,500/- by treating the same as not incurred wholly and exclusively for the purpose of the profession of the appellant.

3. Briefly stated, the facts of the case are that the assessee is an advocate by profession and is a designated Senior Advocate of the Hon'ble Supreme Court of India and is deriving income from business or profession, income from house property, income from capital gain and income from other sources.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed Rs. 19,53,500/- under the head 'Scholarship Expenses'. The assessee was asked to explain why the Scholarship debited in the profit and loss account should not be added back to the income of the assessee.

5. In his reply, the assessee submitted copy of agreement of Scholarship.

6. On perusal of the agreement, the Assessing Officer was of the opinion that there was no specific provision on allowability of this expense under any section of the Act. Thereafter, the Assessing Officer proceeded by referring to section 37 of the Act and came to the conclusion that Scholarship paid by the assessee was not incurred wholly and exclusively for the purpose of his profession. Accordingly, the Assessing Officer disallowed the same.

7. Aggrieved, the assessee carried the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee drew our attention to the order of the co-ordinate bench in the case of the assessee for Assessment Year 2011-12 and pointed out that a similar disallowance was deleted by the Tribunal in assessee's own case.

9. Per contra, the ld. DR could not bring any distinguishing decision in favour of the Revenue, though vehemently stated that the facts are clearly distinguishable.

10. We have given thoughtful consideration to the orders of the authorities below. We have gone through the order of the co-ordinate bench in ITA No.2285/DEL/2016 and 2392/DEL2016 dated 13.08.2019. The Scholarship Agreement referred to by the Assessing Officer is as under:

EXETER COLLEGE

The University of Oxford
MEMORANDUM OF UNDERSTANDING
HARISH SALVE SCHOLARSHIP

19th March 2009

To the Rector and Scholars of Exeter College

Mr Harish Salve, a friend of Exeter College, has expressed a desire to establish an annual scholarship, linked to an Oxford University Clarendon Award tenable at Exeter College, Oxford.

The Gift

Mr Salve has committed to providing annual funding for a scholarship of Rupees XX lakh (Rs. XXXX/-) per annum, increasing each year in line with inflation and worth the full recommended living allowance for a graduate student at Oxford University. His annual gift will be received in the College's account on or before 1st September of each year, The College's account details are:

Bank: Barclays Bank Plc Swift Code : BARC GB22
Sort Code : 20-65-18 IBAN: GB95barc20651890375799
Account Number : 90375799
Account Name: The Bursar, Exeter College Reference: SALVE

The Scholarship

This annual gift is to be used to fund the Harish Solve Scholarship in Law for a top Indian student reading for the BCL, MJur or higher degree in Law at Exeter College, Oxford, It is Mr Salve's wish that this Scholarship be linked to a University of Oxford Clarendon Scholarship which will cover the cost of University and College Fees, It is understood that this Scholarship will be awarded on an annual basis as per the terms and conditions set out below, This award will be known as the Harish Salve Scholarship ("The Scholarship"),

Selection Criteria

Exeter College will offer one Harish Solve Scholarship *per annum* (i.e. one Scholar at any time) and preference will, at all times, be given to the current Scholar if he/she remains in receipt of the original linked Clarendon Scholarship (which is awarded for a maximum of 3 years).

The Harish Salve Scholarship will, therefore, be linked to the Clarendon Scholarship and be tenable for a maximum of three years, open to any Indian student who:

- a) is an Indian Citizen, resident In India, and
- b) has undertaken an undergraduate degree at an Indian Institution of Higher Education, and
- c) wishes to read for a graduate degree at Exeter College, Oxford in law to Include the BCL, MJor, and DPhil and
- d) has been accepted Into the University of Oxford onto such a graduate course, and

e) commits to remaining at Exeter College, Oxford for the duration of his or her course.

Should no suitable candidate be put forward in any year; the Scholarship will not be awarded."

11. It is an undisputed fact that the appellant is a well known Supreme Court Lawyer. The agreement with Exeter College, the University of Oxford, exhibited hereinabove, is self-explanatory. We find that on identical circumstances, the co-ordinate bench in assessee's own case for Assessment Year 2011-12 [supra], had the occasion to consider a similar disallowance and came to the conclusion that such disallowance cannot be sustained and directed the Assessing Officer to delete the same. The relevant findings of the co-ordinate bench read as under:

"13. We have carefully considered the rival contention and perused the orders of the lower authorities. Issue involved in this appeal is whether the expenditure incurred by the assessee is allowable u/s 37 (1) of the act or not. Allowability of an expenditure incurred by the assessee u/s 37 (1) of the act is required to be tested in accordance with nature and scale of the business/ profession of the assessee. It may be a case that in case of one assessee, particular expenditure is " wholly and

exclusively " incurred for the purposes of business and in another case it may not be so. Undoubtedly, assessee is a noted international lawyer who has set up a scholarship for creating his visibility in international arena and his social standing. The assessee has specifically submitted that it has increased lot of value of the CV of the assessee and the government of Singapore has appointed him on certain committees of repute. Even otherwise, it is not open to the revenue to adopt a subjective standard of reasonable as and decide whether the type of the expenditure of the assessee should incur and in what circumstances. The opinion of the learned assessing officer that attending the conferences et cetera would have added more weightage to the professional profile of the assessee is devoid of any merit. It is not the AO but the assessee is carrying on the profession. He knows better that what kind of expenditure he should incur for furtherance of his business. To judge allowability of an expenditure, the learned assessing officer should put himself into the shoes of the assessee and then decide that whether the expenditure incurred by the assessee is necessary or not for the business of the assessee. Thus, allowability of expenditure should always be judged from the mindset of the assessee. The AO cannot put his thinking to say that the expenditure incurred by the assessee is not wholly and exclusively incurred for his profession, unless, he brings his level of thinking to the level of the professional, like assessee. The requirement of incurring the expenditure by a professional/businessman changes by the changes in the dynamics

of the business, its complexities and its uniqueness. The level at which the assessee is carrying on the profession, perhaps, he might not have thought it proper to increase visibility by attending the conferences, seminars et cetera. He has different vision of carrying himself in the professional field to increase visibility and social status. He thought fit to set up a scholarship to Indian students in Oxford University. Thus, in the present case definitely there is a nexus between the expenditure incurred by the assessee and the professional services rendered by the assessee. He has also shown that the student to whom the scholarship has been granted has helped him in a famous case of Vodafone represented by him. Therefore, we are of the opinion that the assessee has incurred the above expenditure wholly and exclusively for the purposes of the business. In the professional field there are innovative ways visualized by the professional to make themselves visible in the professional circle and to build their own professional profile for generating higher and value-added business. It may be, sponsoring a seminar, becoming knowledge partners, setting up the prizes and awards, creating the competitive award ceremonies, hosting vibrant summits of various states. Therefore, it is apparent that at least in the case of the professionals, the way they promote themselves, is changing very fast and the benefits of such expenditure are huge and wide. Therefore according to us the impugned expenditure incurred by the assessee is a revenue expenditure allowable u/s 37 (1) of the income tax act. We do not subscribe to the view of the learned CIT - A that these expenditure

is capital in nature. The expenditure incurred by the assessee is the routine day-to-day expenditure incurred by the assessee for promoting his professional profile. These expenditure cannot be held to be capital expenditure in nature as no fresh new fixed assets is created by paying the scholarship sum. Further merely because in the agreement it is mentioned as an annual gift in the form of scholarship, it does not become a gift. In fact, it is the expenditure incurred by the assessee in furtherance of his business. While issue arose before coordinate bench in case of another professional firm in ITA number 1382/Del/2012 for assessment year 2009 - 10 wherein substantial contribution was made for a building of an association which promotes the study of taxation. The coordinate bench held that such expenditure incurred by the assessee is wholly and exclusively incurred by the assessee for the purpose of its profession. Revenue carried the matter before the honourable Delhi High Court, which upheld the order of the ITAT in ITA number 50/2014 dated 11/8/2015. The facts of the present case are on the far better footing. Hence, we reverse the order of the lower authorities, and direct the learned assessing officer to delete the above disallowance."

12. On finding parity of facts with the facts of the case in hand, respectfully following the findings of the co-ordinate bench [supra] we direct the Assessing Officer to delete the addition.

13 In the result, the appeal of the assessee in ITA No. 2705/DEL/2017 is allowed.

The order is pronounced in the open court on 06.02.2020.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 06th February, 2020.

VL/

Copy forwarded to:

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

**Asst. Registrar
ITAT, New Delhi**

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the C-DC/DC	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the C-DC/DC	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	