

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA ACCOUNTANT MEMBER

ITA No. 9626/DEL/2019  
[A.Y 2015-16]

BMO Advisors Pvt. Ltd  
13, Abdul Fazal Road  
Bengali Market  
New Delhi

Vs.

The A.C.I.T.  
Circle 5 (1)  
New Delhi

PAN : AAMCS 4136 Q

[Appellant]

[Respondent]

Date of Hearing : 24.02.2020

Date of Pronouncement : 25.02.2020

Assessee by : Shri L.N. Pant, Adv  
Shri Dilip Sutar, CA

Revenue by : Shri S.N. Pandey, Sr. DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the  
CIT(A) - 2, New Delhi dated 15.10.2019 pertaining to A.Y 2015-16.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs. 9,26,66,708/- paid to Shri Ashutosh Sharma as bonus.

3. During the course of scrutiny assessment proceedings, the assessee company was asked to explain as to why higher bonus is paid to Shri Ashutosh Sharma.

4. In its reply dated 15.07.2017, the assessee explained in detail the bonus paid to Shri Ashutosh Sharma.

5. Explanation of the assessee did not find any favour with the Assessing Officer who disallowed the bonus u/s 36(i)(ii) of the Income-tax Act, 1961.

6. The assessee carried the matter before the ld. CIT(A) but without any success.

7. Before us, the ld. counsel for the assessee stated that similar disallowances were made in Assessment Year 2013-14 and 2014-15. It is the say of the ld. counsel for the assessee that in Assessment Year

2013-14, the DRP gave favourable directions to the Assessing Officer holding that bonus paid to Shri Ashutosh Sharma should be allowed. In Assessment Year 2014-15, the ld. CIT(A) followed the directions given by the DRP in Assessment Year 2013-14 and deleted the disallowance of bonus.

8. Per contra, the ld. DR stated that the facts of the case in hand are distinguishable from the facts of Assessment Year 2013-14 and 2014-15. The ld. DR read the relevant portion of the assessment order.

9. We have carefully considered the orders of the authorities below. We have also perused the directions of the DRP in Assessment Year 2013-14 and order of the first appellate authority in Assessment Year 2014-15. We find that for similar reasons, disallowances were made in those years but were directed to be deleted. The relevant findings of the DRP in Assessment Year 2013-14 read as under:

"Having considered the fact of the case and material on record, as well as the judicial pronouncement the DRP finds that there is no merit in the AOs contention, even if the assessee arguments of double taxation and the fact of TDS is negated. Any expenditure cannot be disallowed unless it is found to be not

wholly and exclusively incurred for the purposes of business. The Assessing Officer, is, therefore, directed delete the disallowance on this account."

10. The relevant findings of the ld. CIT(A) in Assessment Year 2014-15 read as under:

*7.4 I have carefully considered the observation of the Assessing Officer and submission of the Appellant. I find force in the submission of the ) Appellant. There is no law, which required that terms of employment must be specified in letter of appointment. Even otherwise Mr. Ashutosh Sharma, the recipient of the bonus must have paid Income Tax on the receipt,*

*Therefore, the disallowance of the bonus paid by the Assessee Company to Mr. Ashutosh Sharma will amount to taxation of the same both in the hands of the Assessee Company (by virtue of not allowing the deduction) and the recipient.*

*7.5 In this case, the similar payment has been allowed by the DRP, which comprises of three Commissioners. Vide Para 4.3 of the order of the DRP-1, New Delhi in the case of the Appellant for AY 2013-14, order dated 31.08.2017, the issue has been decided as under :*

"Having considered the fact of the case and material on record, as well as the judicial pronouncement the DRP finds that there is no merit in the AOs contention, even if the assessee arguments of double taxation and the fact of TDS is negated, Any expenditure cannot be disallowed unless it is found to be not wholly and exclusively incurred for the purposes of business. The AO is therefore directed delete the disallowance on this account."

11. As no distinguishing decision has been brought to our notice, respectfully following the stand taken in earlier years, we direct the Assessing Officer to delete the impugned disallowance.

12. In the result, the appeal of the assessee in ITA No. 9626/DEL/2019 is allowed.

**The order is pronounced in the open court on 25.02.2020.**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 25<sup>th</sup> February, 2020.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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