

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.5959/Del./2017
Assessment Year 2014-2015

M/s. Divya Creations, Plot No.97, NSEZ, Noida. Uttar Pradesh. PAN AADFD4879K	vs.	The ACIT, Circle-1, Noida. Uttar Pradesh.
(Appellant)		(Respondent)

For Assessee :	Shri Piyush Kaushik, Advocate
For Revenue :	Shri Jagdish Singh Dahiya, Sr. D.R.

Date of Hearing :	23.06.2020
Date of Pronouncement :	24.06.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Noida, Dated 30.06.2017, for the A.Y. 2014-2015, challenging the addition of Rs.13,67,739/-.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. The A.O. on perusal of Schedule-18 of Selling Expenses noticed that assessee had debited expenses in the name of commission to non-resident other than a company or a foreign company amounting to Rs.13,67,739/-. The A.O. took-up the issue of TDS made on such payments to non-resident agents in the assessment year under appeal and examined the claim of assessee. The A.O. also noted that similar disallowance were made under section 40(a)(i) of the I.T. Act and considering the fact that the expenses made in foreign agency commission are of the same nature as last year and no TDS has been deducted by the assessee, therefore, the amount in question was disallowed under section 40(a)(i) of the I.T. Act. The Ld. CIT(A) dismissed the appeal of assessee.

4. Learned Counsel for the Assessee, at the outset submitted that in A.Y. 2010-2011 similar issue was considered by ITAT, Delhi Bench in the case of assessee

Divya Creation vs., ACIT, Circle-2, Noida reported in [2017] 86 taxmann.com 276 (Delhi-Tribu.) and disallowance have been deleted. The Tribunal held as under :

“Where assessee-firm made payments of commission to those agents, since those agents had their offices situated abroad and, moreover, services were also rendered by them outside India, assessee was not required to deduct tax at source while making payments in question.”

4.1. Learned Counsel for the Assessee submitted that facts are identical as have already been considered in earlier year and this fact is also admitted by the A.O. in the assessment order and disallowances have been made as have been made in earlier year. Therefore, the issue is covered in favour of the assessee and disallowance made may be deleted.

5. On the other hand, Ld. D.R. did not dispute that the issue is same as have been considered in earlier year and disallowance is also same in respect of the same party.

The Ld. D.R. however, relied upon the Orders of the authorities below and also relied upon Judgment of Hon'ble Supreme Court in the case of Transmission Corporation of A.P. Ltd., & Another vs., CIT [1999] 239 ITR 587 (SC).

6. We have considered the rival submissions. It is not in dispute that the issue is same as have already been considered in earlier year by the Tribunal. The parties are also same. The Tribunal examined the issue in the light of agreement and material on record and found that the agent had their base situated in Abroad and moreover services were also rendered by them outside. Therefore, assessee is not required to deduct tax at source while making payments in question. The A.O. in the assessment order has also made disallowance since in earlier year also of the same issue and no TDS have been deducted. Therefore, the facts being identical, no disallowance is required in the matter. We, therefore, following the Order of the Tribunal in the case of assessee for the A.Y. 2010-2011, set aside the Orders of the authorities below and delete the addition.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 24th June, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.