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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA Nos. 411 & 8237/Del/2019
Assessment Years: 2015-16 & 2016-17

Associated Law Advisors, Antriksh Bhawan, 6th Floor, 22, Kasturba Gandhi Marg, New Delhi.	vs.	ACIT, Circle 63(1), New Delhi.

PAN : AAAFA8774F

(Appellant) (Respondent)

Appellant by : Sh. R.P. Mall, Advocate
Respondent by : Sh. P.M. Baranwal, Sr. DR

Date of hearing: 27/10.2020
Date of order : 28/10/2023

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the orders dated 16.01.2019 and 30.09.2019 for the assessment years 2015-16 and 2016-17 passed by the Commissioner (Appeals)-20, New Delhi, Associated Law Advisors ("the assessee") preferred these two appeals, challenging the identical additions.

2. Brief facts of the case are that the assessee is a Law firm by profession and derived income from business and profession and income from other sources. During the course of assessments for these two years, the Assessing Officer found that in the balance sheet submitted by the assessee for the relevant years, the assessee had shown statutory liability on account of TDS payable and submitted that they have been following the cash system of accounting. Assessing Officer disallowed the same on the ground that TDS part of the amount was not paid before the end of the financial year and therefore, he added it back to the income of the assessee.

3. In appeal, ld. CIT(A) confirmed the same.

4. The assessee is, therefore, before us in these two appeals stating that the assessee paid the amount to the Central Government within the time specified in Rule 30(2)(a) of the Income-tax Rules made u/s. 200 of the Income Tax Act and therefore, the authorities below are not justified in making the addition and confirming the same.

5. At the outset, ld. AR brought to our notice that similar additions were made by the Assessing Officer and confirmed by the CIT(A) for the assessment year 2013-14 also and when the matter reached the Tribunal, the co-ordinate Bench of this Tribunal by order dated 11.09.2019 in ITA No. 1122/Del/2017, deleted the addition by following the decision in the case of CIT v. Calcutta Export Company (2018) 404 ITR 654 (SC). He further submitted that since identical question was decided by the Tribunal in favour of the assessee, same may kindly be followed in these years also.

6. Per contra, ld. DR submitted that in the balance sheet submitted by the assessee, the assessee had shown statutory liability on account of TDS payable, but claimed it as an expenditure in the Profit & Loss Account; that since the assessee has been following cash system of accounting whereby only payments which have been made during the year could be claimed as expenditure and the amounts that were not paid cannot be allowed as expenditure and on that score, the Assessing Officer was justified in making the addition and the ld. CIT(A) is justified in confirming the same. Ld. DR further submitted that the assessee shows only the professional receipts which have been actually received as income and does not show the professional receipts as income which had accrued to him despite the fact that TDS was deducted by the concerned party while crediting the account of the assessee and depositing into government account as per 26AS of the assessee and therefore, inasmuch as the Assessing Officer has allowed the entire expenditure, which was incurred/paid during the year while disallowing only such amount of TDS which was not paid during the relevant financial year, his action is justified.

7. We have gone through the record in the light of the submissions made on either side. On a careful consideration of the orders of the authorities below, we find that substantially the very same question had arisen for the assessment year 2013-14 also and having considered the respective contentions of the parties, the Tribunal observed that ; -

> *7. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, the assessee is following the cash method of accounting and therefore generally whatever is the cash outflow, the assessee is entitled to claim the same as a deductible expenditure. In the present case the assessee has made cash payment to*

the various parties after deducting tax at source. The portion of the amount paid to them was already allowed to the assessee as a deductible expenditure. However, the issue is whether the amount of tax deducted at source from the payment made to the recipient of such income can be said to be the amount of expenditure incurred by the assessee and paid during the year and therefore it is allowable to the assessee as business expenditure. We have carefully considered the rival contention and found that according to the provisions of section 198 of the income tax act, tax deducted in accordance with the provisions of the income tax act is deemed to be the income received by the recipient of the above income. Therefore, according to the income tax act itself the above amount of tax deducted at source is deemed to have been received by the recipient of the income. Thus, it cannot be said that the assessee has not paid the amount of tax deducted at source to the recipient of the income from whose payments the tax have been deducted. Further tax deduction at source is a liability cast upon the assessee to deduct the sum from the recipient of such income. In fact the moment assessee deducts the tax at source from the sums paid to the other person it becomes the liability of the assessee who can be held to be an assessee in default for the above sum as well as liable to pay interest and penalty also. Thus, the amount of tax deducted at source is always considered as the sum paid by the assessee on behalf of the recipient of the income. Therefore, it cannot be said that the above sum has not been paid by the assessee even while following the cash system of accounting. Further the action of the learned CIT – A in invoking the provisions of section 40 (a) (i) is also devoid of any merit in view of the decision of the honourable Supreme Court in 404 ITR 654 where the assessee has paid the above tax deduction at source to the credit of the government within the prescribed time. Accordingly the appeal of the assessee on the solitary issue of the disallowance of sum of INR 2 49381/– is allowed.

8. There is no dispute that the facts are similar and the decision of the co-ordinate Bench of Tribunal for assessment year 2013-14 is squarely applicable to the facts of this case also. As of now, such a decision has become final. In view of the decision taken by the co-

ordinate Bench on similar set of facts and circumstances of the case, we find it difficult to deviate from such view. Respectfully following the same, we answer the issue in favour of the assessee.

9. In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 28/10/2020.

Sd/-	Sd/-
(R.K. PANDA)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 28/10/2020

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