

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

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.-897/Del/2018  
(Assessment Year: 2013-14)

Halla India lighting Ltd  
K-61B, LGF, Kalkaji  
New Delhi.

DCIT  
Vs. Circle-11 (1),  
New Delhi.

PAN No. AAACJ 01013G  
Appellant

Respondent

Assessee by	Sh. Mustaq Ahmad, CA
Revenue by	MsRakhi Vimal, Sr. DR

Date of hearing:	10/2/2021
Pronouncement on	10/2/2021

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Aggrieved by the order dated 6/11/2017 in appeal No. 644/16-17 passed by the learned Commissioner of Income Tax (Appeals)-35, New Delhi ("Ld. CIT(A)") in the case of Halla India lighting Ltd ("the assessee"), for the assessment year 2013-14, assessee preferred this appeal on the sole ground of making addition of Rs. 34, 40, 233/-on account of legal and professional charges by the learned Assessing Officer.

2. Brief facts of the case are that the assessee is a company

engaged in the business of manufacturing of automobile components including headlamps, taillamps, horns, switches, bulbs, sundry lamps, wiper arms and wiper blades. For the assessment year 2013-14 have filed their return of income on 29/11/2013 declaring a loss of Rs. 2, 94, 12, 186/-. Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was complete by order dated 23/3/2016 by making addition of Rs. 34, 40, 233/- on account of disallowance of the legal and professional fee on the ground that the assessee had not followed the provisions of rule 31 ACB and therefore such amount was disallowable under section 40(a)(ia) of the Act since the assessee failed to deduct the tax on the provisional fee paid by it. On the very same grounds Ld. CIT(A) dismissed the appeal preferred by the assessee. Hence this appeal.

3. It is the submission of the Ld. AR that the payment of legal and professional fee made by the assessee was to M/s Halla India automotive Pvt. Ltd which is a sister concern of the assessee; that Halla India Automotive Pvt. Ltd duly declared the receipts in their financial statement while filing the return of income; and that such an amount was well short in the profit and loss account under miscellaneous income. He further submitted that Halla India Automotive Pvt. Ltd which is a sister concern of the assessee is also being assessed by the same learned Assessing Officer and therefore, merely by insisting the technical compliance with the filing of the certificate by an accountant, the authorities could have as well look into the return of income filed by the sister concern. He placed reliance on the decision of the Hon'ble Apex Court in the case of Hindustan Coca-Cola beverages Pvt. Ltd 293

ITR 226 (SC) to argue that recovery once again cannot be made from the director where the deductee included the income on which tax was alleged to have been shorted deducted in its taxable income and paid taxes thereon.

4. Per contra, Ld. DR submitted that section 201(1) of the Act gives exemption from deduction of tax at source to the person who furnishes a certificate to this effect from an accountant in such form as may be prescribed and this prescription is given by rule 31 ACB read with form No. 26A and since the assessee failed to comply with the same, the authorities below are justified in making and sustaining the disallowance.

5. In reply, Ld. AR submitted that in view of the decision in Hindustan Coca-Cola beverages (supra) recovery once again cannot be made from the deductor and the assessee is ready to file the certificate in prescribed form if an opportunity is given.

6. We have gone through the record in the light of the submissions made on either side. It could be seen from the paperbook, the assessee is furnishing the statement of account of the deductee with its ITR and Balance Sheet to establish their claim that the sister concern had already declared this amount in their return of income and offered the same to tax. Further the assessee is ready to file the requisite certificate in prescribed form before the learned Assessing Officer. In view of the decision of the Hon'ble Apex Court in the case of Hindustan Coca-Cola (supra), where the deductee already included the income relevant to the present disallowance in their return of income

and offered the same to the tax, recovery again is impermissible. We have to look at not only the form of law but also the spirit of law.

7. In the circumstances, where of the considered opinion that this is a fit case to set aside the impugned order and remand issue to the file of the learned Assessing Officer to consider the same in the light of the submissions made by the assessee and also the certificate under section 31 ACB to be filed by the assessee and take a fresh view. We accordingly allow the ground for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court immediately on the conclusion of the hearing in virtual mode on this the 10<sup>th</sup> day of February, 2021.

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**  
Dated: 10/2/2021

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**