

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 6986/DEL/2017 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Thakur Vaidyanth Aiyar & Co. 221-223, Deen Dayal Marg, New Delhi AAAFT3096M (APPELLANT)	Vs	ACIT Room No. 2205, Pratayaksh Kar Bhawan, J. L. Nehru Marg, New Delhi
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Appellant by	Sh. Sourabh Jain, CA
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	30.06.2021
Date of Pronouncement	19.08.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 04/09/2017 passed by CIT(A)-20, New Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:-

1. *That the Id. AO as well as CIT (Appeal) have erred in making addition of Rs 29,81,399.00 being the service tax payable as on 31.03.2013.*
2. *That the Id. AO and the CIT (Appeal) have erred in not appreciating that entries relating to service tax payable have not been routed through Profit & loss account and as the assessee is maintaining accounts under cash system of accounting , no disallowance / addition can be made to the returned income.*
3. *That, since the service tax payable is not routed through profit and loss*

account ,The provision of section 43B are not applicable and no addition/disallowance can be made for such non payment before the end of financial year.

4. That the Id. AO and the CIT(Appeal) have erred in disallowing and adding a sum of Rs. 21,516.00 and Rs 14,375.00 as TDS payable on others & salary respectively to the returned income.

5. That the Id. AO and the CIT (Appeal) have erred in disallowing and adding a sum of Rs 6300.00 towards Professional Tax payable to the returned income .

6. That the provision of section 43B of the Income Tax Act 1961 overrides and is applicable irrespective whether the accounts are maintained under cash system or mercantile system of accounting.

7. That in the alternative, the id. AO be directed to allow the following payables as deductions in the following Assessment Year under cash system of accounting being consequential relief.

	Disallowance Rs.
(a) Service Tax	29,81,399.00
(b) Professional Tax	6,300.00
(c) TDS Payable	21,516.00
(d) TDS Salary	14,375.00

8. That the Id. Assessing Officer has erred in disallowing 1 /10th of the following expenses on surmise and conjecture and without pointing out any specific defect / deficiency in the accounts of the assessee.

SI. No.	Expense Head	Disallowance
	Rs.	
1.	Staff Welfare	67,808.00
2.	Conveyance	1,37,166.00
3.	General Expenses	1,46,591.00
4.	Telephone	69,137.00
		4,20,702.00

9. That the expenses have been incurred wholly and exclusively for the purpose of business and therefore disallowance of such expenses is bad in the absence of any evidence to the contrary.

10. *That the disallowance is excessive and unreasonable commensurate with the nature of the business and the volume of the turnover and its income.*

11. *That the assessment order is bad in law and facts of the case.*

12. *That the above grounds of appeal are without prejudice to one another.*

3. The assessee is a partnership firm and derives income from profession of Chartered Accountancy. Return of income was filed by the assessee for the Assessment Year 2013-14 on 30/09/2013 declaring a total income of Rs.53,70,280/-. During the course of assessment proceedings the assessee produced original books of accounts, bills, vouchers, salary record, log book disposal. The Assessing Officer disallowed the expenses which according to the Assessing Officer have not been paid in the relevant Financial Year. The Assessing Officer further disallowed interest on service books as well as earlier year service tax. The Assessing Officer also disallowed the wealth expenses, staff welfare expenses, car maintenance expenses, general expenses, telephone expenses. The Assessing Officer further disallowed deduction claim u/s 80G. Thus, the income of the assessee is assessed at Rs. 1,05,44,890/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. During the hearing the assessee submitted that as regards Ground Nos 1, 2, 3, 5, 6 and 7 (a) & (b) i.e. service tax component amounting to Rs. 29,81,399/- and professional tax amounting to Rs. 6,300/- are not pressed and are withdrawn as the same was considered by the Assessing Officer vide rectification order dated 05.07.2018. As regards Ground Nos. 4 and 7 (c) & (d) relating to disallowance in respect of TDS payable on others and salary respectively to the return income, the Ld. AR submitted that the statutory liabilities are covered under Section 43B of the Income Tax Act, 1961 and have

been paid in the ensuing year before the filing of Tax Return in terms of Section 139(1) of the Act. The Ld. AR further submitted that as such provisions of Section 40(a)(ia) cannot be invoked in the present case. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Rajinder Kumar (2013) 260 CTR (Del.) 113 as well as the decision of Tribunal in case of Gagrat & Co. vs. ACIT (ITA No. 3194/Del/2017 order dated 07.02.2020).

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). The Ld. DR further submitted that the assessee is following cash system of accounting whereby only payments which have been made during the year can be claimed as expenses and as these expenses are not paid, the same cannot be allowed as expenses.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer is not disputing the accounting method of the assessee which is cash system. In fact, the Assessing Officer as well as the CIT(A) is admitting that TDS has been deducted by the concerned party while crediting the account of the assessee and deposited into government account as per 26AS of the assessee. The assessee has made TDS payment before the due date of filing of the return under Section 139(1) which emerges from page no. 6 to 11 of the paper book annexing challans as well. The decision of the Hon'ble Delhi High Court in case of Rajinder Kumar (supra) and the decision of the Tribunal relied by the Ld. AR are applicable in the present case as the assessee has paid the TDS amount before the due date i.e. before the date on which return of Income u/s 139(1) of the Act has to be filed. Thus, Section 40(a)(ia) will not be applicable in the present case. Therefore, Ground Nos. 4, 7(c) and (d) are allowed.

8. As regards to Ground No. 8 relating to disallowance of expenses to the extent of 1/10th, the Ld. AR submitted that all the staff welfare, convenience expenses, general expenses as well as telephone expenses are either below Rs.

20,000 or Rs.40,000/- and, therefore, some payments were made in cash or through vouchers. The Assessing Officer could not point out or detect any expenditure which was without any voucher during the assessment proceedings and hence addition is unwanted and unwarranted.

9. The Ld. DR relied upon the assessment order and the order of the CIT(A).

10. We have heard the Ld. DR and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has simply rejected all these expenses stating in the Assessment order that the assessee could not produce proper vouchers. But from the perusal of the records which was before the Assessing Officer, it can be seen that the assessee has given all the vouchers and the relevant details of these expenses which was not at all taken into consideration by the Assessing Officer. Thus, merely on assumption basis the Assessing Officer disallowed 1/10th of these expenses which are not just and proper. Therefore, Ground No. 8 is allowed.

11. As relates to Ground No. 9 to 12, the same are not pressed/withdrawn by the Ld. AR at the time of hearing before us. Hence, Ground Nos. 9 to 12 are dismissed.

12. In result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on this 19th Day of August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 19/08/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI