

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH "F": NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
 AND
 SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA Nos. 2439 /DEL/2019 (A.Y. 2013-14)

&

ITA Nos. 2440 /DEL/2019 (A.Y. 2015-16)

M/s Walker Chandilok & Co. LLP , L-41, Connaught Circus, New Delhi-110001. PAN- AAAPW4298E	<u>Vs</u>	ACIT, Circle-63(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. Vinod Bindal, Ld. CA & Ms. Rinky Sharma, Ld. ITP	
Respondent by	Sh. Parikshit Singh, Ld. Sr. DR	
Date of hearing	12.04.2022	
Date of pronouncement	29/04/2022	

ORDER

PERN.K. CHOUDHRY, JM:

The Assessee has preferred the instant appeals against separate orders dated 17.03.2019 and 29.01.2019 passed by the Id. Commissioner of Income tax (Appeals)-18, New Delhi (in short "Ld. Commissioner") for the assessment years 2013-14 and 2015-16 respectively u/s 250 of the Income Tax Act, 1961 (in short "the Act").

Since similar issue is involved for adjudication in both the appeals, therefore the same were heard together and are being disposed of by this common order for the sake of convenience.

2. Grounds of appeals are as under:

ITA no. 2439/Del/2019 (A.Y. 2013-14):

“The CIT(A) erred in law and on facts in confirming the disallowance of Rs. 35,50,235/- being TDS payable outstanding on 31/3/2013 though paid within the due date prescribed by the Act as the same was not paid during the year and the assessee followed cash system of accounting ignoring the evidences and submissions placed on record. Thus the addition so made should be deleted.

The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

ITA no. 2440/Del/2019 (A.Y. 2015-16):

“1. The CIT(A) erred in law and on facts in confirming the disallowance of Rs. 47,60,839/- being TDS payable outstanding on 31/3/2015 though paid within the due date prescribed by the Act as the same was not paid during the year and the assessee followed cash system of accounting ignoring the evidences and submissions placed on record. Thus the addition so made should be deleted.

2. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

3. Learned counsel for the Assessee at the outset contended before us that the Assessee is following cash system of accounting and there is no dispute that TDS for both the assessment years in question has been paid within the due date prescribed under the Act. The issue involved in both the appeals is squarely covered in favour of the Assessee by the earlier order dated 15.01.2021 rendered by the Hon'ble Tribunal in ITA nos. 2309 & 2310/Del/2018 in Assessee's own case for the assessment years 2012-13 and 2014-15, wherein the Tribunal has deleted identical addition made by the Revenue by following the decision of the ITAT in the case of Deloitte, Haskins & Sells Vs. ACIT in ITA no. 3715/Del/2017 order dated 15/1/2021. In support of his contention the learned counsel has filed copies of the aforesaid orders of the Tribunal. Learned counsel, therefore, submitted that following the earlier order of the Tribunal in Assessee's own case, the addition in question made by the AO and sustained by the learned CIT(Appeals) may be deleted by allowing Assessee's appeals .

4. Learned DR did not controvert the aforesaid factual position however supported the orders passed by the authorities below.

5. We have heard rival submissions and gone through the material available on record. We find that identical issue in Assessee's own case for assessment years 2012-13 and 2014-15 came up for consideration before the Tribunal, wherein the Tribunal has allowed the appeals of the Assessee by deleting the addition, inter alia, by observing as under:

"5. As regards Ground No. 1, the Ld. AR submitted that the disallowance of an amount of TDS payable of Rs.30,03,217/- outstanding on 31st March, 2012 was paid within the due date prescribed by the Act.

But the CIT(A) ignored this and confirmed the addition of the Assessing Officer observing that the same is not allowable deduction as the same was not paid during the year as the assessee followed cash system of accounting. The Ld. AR submitted that no addition on this ground was made till Assessment Year 2010-11 by the Revenue and the additions were first time made in Assessment Year 2011-12, wherein it was deleted by the CIT(A) for which no appeal was filed by the Revenue. The Ld. AR relied upon the decision of the ITAT in case of Deloitte, Haskins and Sells Vs. ACIT ITA No. 715/Del/2017 order dated 15/1/2021 wherein the said addition was deleted.

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

7. *We have heard both the parties and perused the material available on record. The assessee is constantly following cash system which is not disputed by the Revenue. In the previous Assessment Years, no additions were made except in Assessment Year 2011-12 which was deleted by the CIT(A). Thus, the Revenue is continuously taking the stand that the TDS payables outstanding are proper. The decision in case of Deloitte (supra) is apt in the present case as the assessee has paid the said amount within the due date prescribed by the Act. Thus, Ground No. 1 of the assessee's appeal is allowed."*

6. We observe that facts of the instant appeal are exactly similar to the facts of the aforesaid cases decided by the Hon'ble Tribunal, therefore respectfully following the earlier decision of the Tribunal in Assessee's own case, we are inclined to delete the addition made by the AO and sustained by the learned CIT(Appeals) on the issue in question for both the assessment years, hence ordered accordingly .

7. In the result, appeals of the Assessee are allowed.

Order pronounced in open court on 29/04/2022.

-Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Date: 29/04/2022

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI