

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**(DELHI BENCH 'B' : NEW DELHI)****BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER
AND****SH. ANUBHAV SHARMA, JUDICIAL MEMBER**ITA No. 3074/Del/2019
(Assessment Year : 2015-16)

Thakur Vaidyanath Aiyar & Co. 221-223, Deen Dayal Upadhaya Marg, New Delhi	Vs.	The Asstt. Commissioner of Income Tax Circle 61(1), Room No. 2005, 20 th Floor, Civic Centre, 'E-2' Block, New Delhi PAN – AAAFT3096M
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Sanjay Jain, CA
Revenue by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	28.04.2022
Date of Pronouncement:	05.05.2022

ORDER**PER ANUBHAV SHARMA, JM:**

The assessee has come in appeal against order dated 18.02.2019 in appeal No. 10173/17-18 for the assessment year 2015-16 passed by Commissioner of Income Tax (Appeals)-20, New Delhi in appeal pending before him against order dated 06.12.2017 passed by Assistant Commissioner of Income Tax, Circle-63(1), New Delhi.

2. At the outset it is to be mentioned that an application is moved by the appellant assessee to allow adding two more grounds of appeal which were not taken by some omissions. Nothing substantial was submitted to oppose it.

As the grounds desired to be added arise out of those additions which were challenged before Ld. CIT(A), same are allowed to be impleaded.

2.1 The facts in brief are the assessee is a partnership firm and derives income from profession of Chartered Accountancy. Return of income declaring total income of 52,59,190/- was filed. The assessee is following Cash System of Accounting whereby only payments which have been made during the year can be claimed as expenses. The assessee has shown current liabilities and provisions amounting to Rs. 57,23,640/- which were examined by the Ld. Assessing officer and following disallowance were made :

Sl. No.	Particulars	Amount
1.	Payable to other parties/ staff	4,69,029/-
2.	TDS payable	74,670/-
3.	Others in other liabilities	1,43,666/-
4.	Imprest S. Raghunath	2,85,779/-
5.	Bank of India Overdraft	1,52,387/-
Total		11,25,531/-

3. Apart from that following additions were made :

Sl. No.	Particulars	(Amount in Rs.)
I.	Addition on account of Cash Payment u/s 40A(3)	Rs. 4,43,750/-
II.	Disallowance u/s 36(1)(va)	Rs. 4,08,224/-
III.	Disallowance on account of Personal Expenses	Rs.2,46,409/-
IV.	Disallowance on account of Conveyance Expenses	Rs. 1,07,871/-
V.	Disallowance on account of Travelling Expenses	Rs. 2,60,213/-
VI.	Disallowance on account of Staff Welfare Expenses	Rs. 63,213/-
VII.	Disallowance on account of General Expenses	Rs. 1,04,404/-
VIII.	Disallowance on account of Telephone Expense	Rs. 1,12,551/-

4. In appeal the Ld. CIT(A) had confirmed the addition of Rs. 4,69,029/- under the head payable to other parties / Staff TDS payable Rs. 74,670/- confirming an addition of Rs. 48,528/- out of imprest to Sh. S. Raghunath account and confirming addition of Rs. 1,12,551/- being 10% of total telephone expenses.

5. The assessee has raised following grounds of appeal, after amendment

:-

“1. That the Id. Assessing Officer as well as the Ld. Commissioner of Income Tax (Appeals) have erred in making an addition of Rs. 4,69,029.00 under the Head “Payable to the Other Parties and Staff” - ‘Sundry Creditors’.

2. That the amounts payable towards “Other Parties and Staff” are **not** on account of provision for expense and cannot be added to the income except for Rs. 31,254.00 which may be added out to the income.

3. That the ld. Commissioner of Income Tax (Appeal) as well as ld. A. O. have erred in making an addition of Rs. 74,670.00 against TDS payable.

4. That the amount of TDS Rs. 74,670.00 is paid within the due date and cannot be added to the income.

5. Alternatively the TDS deducted in the previous year relevant to A.Y. 2014-15 and paid in the previous year relevant to A.Y. 2015-16 be allowed as deduction and appropriate directions be issued to allow deduction in the A.Y. 2016-17 as the same was paid in the previous year relevant to A.Y. 2016-17.

6. That the Id. Commissioner of Income Tax (Appeal) has erred in confirming an addition of Rs. 48,528.00 out of the imprest S. Raghunath account.

7. That the ld. A.O. as well as ld. CIT(Appeals) have erred in making an addition of Rs. 1,12,551.00 being 10% of the total telephone expenses

8. That the telephone expenses have been incurred for the purpose of the profession of the assessee and are fully deductible.

9. That the ld. AO has erred in disallowing a sum of Rs. 2,60,213.00/- being the 10% of the Travelling Expenses amounting to Rs. 26,02,133.00 on surmise and conjecture without pointing out any specific short coming and thus the addition is bad in law and facts of the case.

10. *That the Ld. AO has erred in disallowing a sum of Rs. 1,07,871.00 being the 10% of the Conveyance Expenses amounting to Rs. 10,78,714.00 on surmise and conjecture without pointing out any specific short coming and thus the addition is bad in law and facts of the case.*

11. *That all of the above additions to the returned income of the assessee are bad and in law and facts of the case.*

12. *That your appellant prays that he may be allowed to add, amend or withdraw any of the above grounds of appeal at the time of hearing of appeal.”*

6. Arguments were heard and record perused. The findings are as below and ground wise :-

GROUND NO. 1 AND 2

7. In regard to these grounds it was submitted on behalf of the assessee that the Id. Tax Authorities below have failed to take into account that opening balances were reflected in statement of amounts payable to the other parties and staff and the same have been added at page no. 2 of the paper book. The assessee has given the list of sundry creditors and staff account balances. The perusal of same shows that of the total of closing balances Rs. 4, 69,029/- which has been added by Ld. AO, on behalf of the assessee it has been accepted that to the extent of Rs. 31,254/- amount can be added to the returned income as assessee is following cash system of accounting. It can be appreciated that while upholding the addition, the Ld. CIT(A) has not taken into consideration the argument of the assessee and in a very summary manner dealt with it. The Bench is of considered opinion that as assessee has merely carried the opening balances payable to other parties and staff the same could not have been added in the relevant year except to the extent of Rs. 31,254/-. Accordingly the ground no. 1 and 2 are allowed and the AO shall be at liberty to make addition to the extent of Rs. 31,254/- under the head “payable to other Parties and Staff” instead of Rs. 4,69,029/-.

GROUND NO. 3, 4 AND 5

8. In regard to these grounds it can be observed that in the assessee's own case for the assessment year 2013-14, ITA No. 6986/Del/2017, and the Assessment Year 2014-15, ITA No. 5990/Del/2018 the Co-ordinate Benches have held that as the TDS has been deposited before due date of filing of the return u/s 139(1) of the act Section 40(a)(ia) of the Act will not be applicable. The Id. DR could not cite any proposition of law or fact to distinguish, therefore, these grounds are decided in favour of the assessee.

GROUND NO. 6

9. In regard to this ground it was submitted on behalf of the assessee that Shri Raghunath is a CA and incharge of the office of the assessee at Chennai. The receipts by him were for meeting daily expenses at Chennai it can be observed that the Id. CIT(A) has dealt with this ground but directing the Assessing officer to add Rs. 48,528/- instead of Rs. 2,85,779/- the detailed statement of imprest to Mr. S. Raghunathan has been filed by the assessee at page no. 11 – 14 of the paper book and the same shows that opening balance was 2,37,251/- and the closing credit balance was 2,85,779/-. Thus, as the assessee is following cash system accounting, there is no error in the findings returned by the Ld. First Appellate Authority. Accordingly this ground requires no intervention, the same is **dismissed**.

Ground no. 7, 8 and additional ground no. 9 and 10

10. In regard to these grounds it can be observed that the Tax Authorities below have made addition to the extent of 10% of the expenses however, in assessee's own case for the assessment year 2013-14 & 2014-15 such adhoc disallowances have been set aside by the Co-ordinate Benches of Tribunal. There are no grounds to distinguish as very randomly on the basis of prevention of leakage of revenue

additions have been made. Specially in regard to the telephone expenses it can be observed that expecting professionals to maintain register of telephone calls while using telephone for professional purposes is quite unreasonable. There is no case of revenue that the expenses were disproportionate to the income earned or professional activities. Therefore, these grounds are allowed in favour of the assessee.

As the consequences of the above determination of the grounds, **the appeal is allowed partly.**

Order pronounced in open court on this 5th day of May, 2022.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 5th .05.2022

Binita, Sr.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI