

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.3586/Del/2019, A.Y. 2015-16

|   |     |                                     |
|---|-----|-------------------------------------|
| Anand And Anand<br>B-41, Nizamuddin East, New<br>Delhi<br>PAN : AAFA0186F | Vs. | ACIT,<br>Circle-63(1),<br>New Delhi |
| <b>(APPELLANT)</b>  |     | <b>(RESPONDENT)</b>                 |

|             |                        |
|-------------|------------------------|
| Assessee by | Sh. B.K.Anand, CA      |
| Revenue by  | Shri Kanv Bali, Sr. DR |

|                        |            |
|------------------------|------------|
| Date of hearing:       | 16.08.2022 |
| Date of Pronouncement: | 23.08.2022 |

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Assessee against order dated 21.02.2019 in appeal no. 10238/2017-18 for the assessment year 2015-16 passed by Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order

dated 15.12.2017 u/s 143(3) of the Income Tax Act, 1961 passed by ACIT, Circle 63(1), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The assessee is a firm Legal Professionals. Return of income was filed declaring income of Rs. 23,01,41,110/- and the case was selected under compulsory Manual Scrutiny. Apart from disallowance of Rs. 69,76,701/- shown in the balance sheet as statutory liability on account of TDS payable certain other additions by way of disallowances of expenditure were made by Ld. AO and in appeal the Ld. CIT(A) has sustained the disallowance Rs. 69,76,701/-, which has been challenged before this Tribunal by raising following grounds of appeal :-

*“1. That the Authorities below erred in making an addition of Rs. 69,76,701/- to the returned income on account of TDS payable as on 31.03.2015, contrary to the facts of the case and law.*

*2. That the authorities below erred in not holding that the provisions relating to the assessee's responsibility for deduction and deposit of tax at source were part of provision for collection and recovery of tax and not of computing sections of total income and therefore out of preview of section 145 of the Income Tax Act, 1961.*

*3. That the Authorities below having accepted the expenses incurred and debited to Profit and Loss Account as Professional expenditure, erred in disallowing the portion thereof taken to liability towards taxes collected at source in respect of such expenses.”*

3. Heard and perused the record.

4. On behalf of the assessee it was submitted that Ld. Tax Authorities below have fallen in error in considering the provisions made for TDS to be disallowable payment as provisions of Section 145 of the Act were wrongly

invoked. It was submitted that TDS payable is statutory liability and whether the account are maintained on cash or mercantile basis do not have bearing in allowing the same. Reliance was placed on co-ordinate Bench decision dated 15/1/21 in **M/s. Deloitte Haskins & Sells vs. ACIT, ITA No. 3715 & 3716/Del/2017** wherein in regard to similar disallowance, the Co-ordinate bench had deleted the addition.

On the other hand, Ld. Sr. DR defended the orders of Ld. Tax Authorities below.

5. The grounds raised are based on common facts and law, accordingly are taken up together for determination. In regard to these grounds, it can be observed that the Ld. Tax Authorities below have not discussed as to what were the payments which were made giving rise to TDS. It appears that Ld. AO was carried by the fact that the assessee is following cash system of accounting, therefore, the TDS being one part of expenses debited in P&L Account therefore, to the extent of TDS the expenses being not actually incurred and paid in the relevant financial year, have to be disallowed.

6. The Bench is of considered opinion that such an opinion of Tax Authorities below is not sustainable because the assessee has shown the expenditure as a whole in his accounts having been paid. What remains in the hands of assessee is not on account of any payment due to such persons but the tax deducted at source is left to be deposited to the Government in accordance with the relevant provisions. It was for the purpose of accounting that the amount has been shown in the form of provision not as 'payable' on any account to any creditor or on a contingency but held merely to be 'deposited' in due course. Even otherwise, the heads of expenses against

which the payments were made when stand allowed through P&L account, some part of it, being TDS, cannot be left standing alone, by holding it as still 'payable.

7. The Co-ordinate bench findings in the case of **M/s. Deloitte Haskins & Sells vs. ACIT (supra)** also bolsters the conclusion arrived by this bench, where in para 7.1 the Bench had held :-

*“7.1 As far as Ground No.2 in Assessment Year 2011-12 is concerned, we note that, undisputedly, the assessee is following cash system 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 duly deducting tax at source. The portion of the amount paid to them has already been 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, is it allowable to the assessee as business expenditure. We note that according to the provisions of section 198 of the Income Tax Act, 1961 (hereinafter called ‘the Act’), tax deducted in accordance with the provisions of the Act is deemed to be the income received by the recipient of the income. Therefore, according to the Act itself the amount of TDS is deemed to have been received by the recipient of the income. Therefore, in our considered opinion, it cannot not be said that the assessee had not paid the amount of tax deducted at source to the recipient of the income from whose payments the tax had been deducted. TDS is a liability cast upon the assessee to deduct the sum from the recipient of such income. The moment the 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. Therefore, the amount of TDS is to be 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 had not been paid by the assessee even while following the cash system of accounting. It is also not in dispute that the assessee has duly deposited the tax deducted at source within the time prescribed under the Act. Accordingly, we are unable to concur with the findings of the Ld. CIT (A) on the issue and direct that the impugned amount of TDS be granted as a deduction in assessment year 2011-12. Thus, ground no. 2 also stands allowed in assessment year 2011-12.”*

7. Therefore, grounds are allowed. **The appeal is allowed** with direction to delete the impugned addition.

**Order pronounced in the open court on 23<sup>rd</sup> August, 2022.**

**Sd/-**

**(N. K. BILLAIYA)**

**ACCOUNTANT MEMBER**

*Date:- 23<sup>rd</sup>.08.2022*

**\*Binita, SR.P.S\***

**Sd/-**

**(ANUBHAV SHARMA)**

**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI