

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.1233 & 1234/DEL/2020
Assessment Years 2007-08 & 2008-09

Anish Kumar Gupta, K-28, 3 rd Floor, Sarita Vihar, New Delhi.	v.	ITO, Ward-37(1), New Delhi.
TAN/PAN: AFAPG9859G		
(Appellant)		(Respondent)

I.T.As. No.1235, 1236 & 1237/DEL/2020
Assessment Year 2007-08, 2008-09 & 2009-10

Ashish Kumar Gupta, K-28, 3 rd Floor, Sarita Vihar, New Delhi.	v.	ITO, Ward-37(1), New Delhi.
TAN/PAN: AGQPG7405B		
(Appellant)		(Respondent)

ITAs No.1452 & 1453/DEL/2020
Assessment Years 2007-08 & 2008-09

ITO, Ward-61(1), New Delhi.	v.	Anish Kumar Gupta, K-28, 3 rd Floor, Sarita Vihar, New Delhi.
TAN/PAN: AFAPG9859G		
(Appellant)		(Respondent)

ITAs No. 1450 & 1451/DEL/2020
Assessment Years 2007-08 & 2008-09

ITO, Ward-61(1), New Delhi.	v.	Ashish Kumar Gupta, K-28, 3 rd Floor, Sarita Vihar, New Delhi.
TAN/PAN: AGQPG7405B		
(Appellant)		(Respondent)

Appellant by:	Shri Anish Kumar Gupta CA		
Respondent by:	Shri Kanav Bali, Sr.D.R.		
Date of hearing:	23	08	2022
Date of pronouncement:	31	08	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The Bunch of captioned appeals relates to different assessment years involving common issues and, as stated, both the assessee are brothers close relatives. Having regard to commonality of the issues involved, all the matters were heard together and are being disposed of by this common order.

2. To begin with, we shall refer to ITA No.1233/Del/2020 pertaining to Mr. Anish Kumar Gupta concerning Assessment Year 2007-08 as a lead case for the purposes of adjudication.

ITA No.1233/Del/2020 (Assessment Year 2007-08) (Anish Kumar Gupta)

3. The grounds of appeal in all cases are similar. For easy reference, the grounds of appeal raised by the assessee in AY 2007-8 are reproduced hereunder:

“1. That the Ld. CIT Appeal has erred in passing the impugned order u/s 143(3) of the IT Act which is contrary to facts and provision of law as such the assessment so framed is liable to be set aside/cancelled.

2. That the Ld. CIT Appeal AO has erred and is also not justified in making the addition u/s 68 of IT Act 1961 of Rs. 1,24,37,500/-on account of cash deposit which is perverse, capricious, arbitrary, bad in law and also contrary to the facts and provision of law as such the addition so made is liable to be deleted.

3. *That the Ld. CIT Appeal AO has erred and is also not justified in making the of Rs. 2,76,725/- on account of sundry creditors which is perverse, capricious, arbitrary bad in law and also contrary to the facts and provision of law as such the addition so made is liable to be deleted.*

4. *That the Ld. CIT Appeal AO has erred and is also not justified in making the addition of Rs. 5,17,758/- on account of expenses payable which is perverse, capricious arbitrary, bad in law and also contrary to the facts and provision of law as such the addition so made is liable to be deleted.”*

4. It transpired in the course of hearing that broadly, two issues are involved in all captioned appeals, namely (a) addition under S. 68 on account of cash deposits (b) disallowances of expenses and additions on account of sundry creditors pertaining to expenses incurred with reference to contract entered with Reliance Industries Ltd.(RIL) for rendering services on behalf of RIL.

5. At the time of hearing, Mr. Anish Kumar Gupta appearing in person for himself as well as for the other assessee, namely, Mr. Ashish Kumar Gupta (in his capacity of his brother) submitted at the outset that both the assessee captioned above intends to surrender the amount of cash deposit challenged as per ground no.2 of this appeal as well as similar grounds agitated in all other captioned appeals and treat it as their income in respective assessment years with a view to buy peace of mind and avoid protracted litigation.

6. In view of categorical assertions made on behalf of the assessee for himself and for his brother towards withdrawal of first issue in contentions; Ground no.2 of the impugned appeal

in ITA No.1233/Del/2020 concerning Assessment Year 2007-08 is dismissed as not pressed.

7. Likewise, corresponding grounds of similar nature seeking to challenge additions on account of cash deposits in all the captioned appeals, pertaining to both assessee, are dismissed as not pressed.

8. Grounds No.3 and 4 relate to second issue i.e. treatment of sundry creditors of Rs.2,76,725/- and related issue of disallowance of expenses amounting to Rs.5,17,758/- in the instant case. Similar disallowances and additions towards expenses and sundry creditors have been made by the revenue in other captioned appeals also.

8.1 In the Assessment order, the Assessing Officer has made aforesaid additions on the ground that no documents/details have been filed by the assessee in support of its claim. The CIT(A) has also affirmed the additions in a mechanical manner with giving any substantive reasons.

8.2. The Ld. Counsel in this regard submitted that in pursuance of an agreement with Reliance Industries Ltd. (RIL) and all attendant facts, it may be observed that before incurring any expenses on the RIL, approval would have to be taken from RIL. The assessee merely acted as a consultant to RIL and has earned the professional fee of a meager amount in the process. It was further pointed out that all the expenses incurred on behalf of the RIL has been subject matter of TDS provisions. The payments were first received from RIL for onward payments to

various parties as per approvals. The party namely RIL was deducting TDS in such payments where applicable and those amounts have been paid to other parties on behalf of RIL in consideration of services rendered to RIL. The assessee in turn has also deducted TDS in terms of provisions of law. As contended, the assessee has merely acted as conduit for RIL to execute transactions on their behalf. A confirmation received from RIL towards incurring such expenses on behalf of RIL was also referred. It was further pointed out that detailed submissions were made before the CIT(A) in this regard giving complete details and facts as available with the assessee. The expenses have been incurred in fiduciary capacity for which additions in the hands of assessee is not justified.

9. We have heard the rival submissions as well as perused the order of the lower authorities as well as material referred to and relied upon in the course of hearing. The CIT(A) has confirmed the action of AO in a non-descript manner. No reasons were assigned for not admitting the claim of the assessee. The relevant operative para of CIT(A) reads as under:

“No documents/details have been filed in support of his claim for which the addition of Rs.2,76,725/- on account of sundry creditors and Rs. 5,17,758 on account of expenses payable. The same is also disallowed this time also.”

10. Noticably, identical issue has been examined by the Co-ordinate Bench in Assessment Year 2006-07. In the identical factual matrix, the co-ordinate bench observed as under:

“2. The assessee individual is a Chartered Accountant providing management consultancy services to M/s Reliance Industries Ltd. (RIL). The Assessing Officer observed that as per the consultancy agreement

between the assessee and RIL, the assessee had to receive ? 20,000/- per month for service rendered; that however, as per the record of payment vouchers, the expenses, the details of which had been given by the assessee on behalf of RIL, were inflated. The Assessing Officer disallowed the following payments:-

Business Promotion entertainment	10%	Rs.3342411/-	Rs.334241/-
Conveyance expenses	10%	Rs.2159043	Rs.215904/-
Dewali expenses	25%	Rs.970457/-	Rs. 242115/-
Miscellaneous expenses	10%	Rs.239291/-	Rs.23929/-
Parking & Forwarding	10%	Rs.224550/-	Rs.22455/-
Social welfare	20%	Rs.3925171/-	Rs.785034/-
Travel expenses	10%	Rs.572914/-	Rs.57291/-
Vehicle Hire Charges	10%	Rs.3956456/-	Rs.395645/-
Photocopy	10%	Rs.421473/-	Rs.42147/-
Donation and Charity	100%	Rs.15420/-	Rs.15420/-
		Rs.	2134181 /-

The Ld. CIT (A) deleted the disallowance.

4. The Ld. DR has contended that while wrongly deleting the disallowance correctly made, the Ld. CIT (A) has failed to take into consideration the observations made by the Assessing Officer, to the effect that the expenses were inflated, whereas the full payment had been received by the assessee from RIL during the year.

5. The Id. counsel for the assessee, on the other hand, has strongly relied on the impugned order and it has been contended, as before the authorities below, that the assessee had received the reimbursement of the expenses from RIL through banking channel, as evident from the bank account duly produced; that confirmatory letters from RIL regarding the reimbursement of expenses under different heads, relating to the three proprietary concerns of the assessee duly supported the reimbursement; that the expenses were reimbursed to the assessee after TDS vide TDS certificates, which was filed; that the expenses were duly supported by bills and vouchers; that separate Profits & Loss Accounts of the three proprietary concerns had been prepared and the income had been shown together in the return by the assessee; that the books of account of all the three concerns were audited; that the allegation of inflation of expenses was nowhere proved by the Assessing Officer and no expense was shown to be inflated ad a mere ad hoc addition was made, based on nothing but suspicion and guess work, without finding any fault whatsoever in the books of account of the assessee; and that the Ld. CIT (A) has correctly deleted the disallowance.

6. Having heard the rival contentions in the light of the material available on record, we find that it was in consonance with the assessee's agreement with RIL that he had received consultancy fees in

his three concerns. He had also received reimbursement of actual expenses incurred on behalf of RIL. The Assessing Officer doubted these expenses and dubbed them to be inflated. As to how it was so, was nowhere delineated in the assessment order and the Assessing Officer made ad hoc disallowances @ 10% and from 20% to 25% respectively, in some cases. This was done without assigning any reason whatsoever, overlooking the fact that the reimbursement by RIL to the assessee was through banking channel and the payment of the expenses to the respective parties had also been made by the assessee through cheques. Besides, the expenses were duly supported by bills and vouchers which had been filed before the Assessing Officer and which were not either disputed or even test checked. The books of account of the assessee were audited u/s 44AB of the IT Act. The correctness and completeness of the books of account was nowhere challenged by the Assessing Officer. Even so, the Assessing Officer made the ad hoc addition of Rs. 21,34,181/-, disallowing the expenses under different heads on a presumptive basis. This addition was entirely unsustainable in the eye of law and the Ld. CIT (A) has correctly deleted the same, duly taking into consideration the aforesaid position and the fact that all the expenses in question stood incurred for business purposes by the assessee on behalf of RIL and it was these expenses which were reimbursed by RIL to the assessee. The payments had been made by the assessee to the parties on due TDS, as available from the bank statements and the TDS was deposited with the TDS Ward.

7. In view of the above, finding no error whatsoever therein, the order of the Ld. CIT (A) is upheld and the grievance raised by the Department is rejected.”

11. The co-ordinate bench, in essence, found the claim of expenses on behalf of RIL to be bonafide and reversed the disallowances of expenses. The Expenses payable and sundry creditors in question are only offshoots of such expenses and thus there is no warrant to take a different view on such expenses.

12. The second issue towards expenses incurred, expenses outstanding or payable by way of sundry creditors agitated by assessee thus stands allowed and the action of revenue authorities stands reversed.

13. The facts in case of both the assessee in all the captioned assessment years are identical and flows from similar

arrangement from RIL. Therefore the above stated observations made by the Co-ordinate Bench in Assessment Year 2006-07 shall apply *mutatis mutandis* to all the assessment years in both assessee. The expenses incurred and/ or payable on account of transaction in relation to RIL are therefore required to be treated as admissible expenditure incurred on behalf of RIL. The action of the lower authorities is thus reversed in all the assessment years in both assessee.

14. The grounds of appeal raised by the Revenue reads as under:

1. Whether the Ld. CIT(A) has erred in deleting the addition made on account of expenses incurred for non business purposes in response to which, no details/ correspondence with RIL has been furnished during the course of original assessment and also during the course of current assessment proceedings.

2. Whether the ld. CIT (A) has erred in not appreciating the fact that the facts of the present case are different from the case of Anish Kumar Gupta for AY 2006-07 as ad hoc addition was made in AY 2006-07.”

15. As per its grounds of appeal, the Revenue has challenged the action of the CIT(A) whereby the additions made on account of expenses, treated by the Assessing Officer to be for non business purpose, has been reversed by the CIT(A).

16. The CIT(A) has dealt with the issue as under:

"8. The sixth ground relates to addition of Rs.2,74,76,043/- representing receipts from M/s RIL. In the assessment order, The AO has recorded as under:-

"3.1 On perusal of copy of agreement with Reliance Industries Ltd. (RIL) furnished by the assessee, it is seen that before incurring any expenditure on behalf of RIL, approval would be taken from RIL. The condition laid down in the agreement is reproduced as under:-

"a) Salaries for the retainership and fees for the consultants engaged - should before engaging any employees or consultants, seek the approval of Reliance Industries Ltd.

b) Salaries from contractual employees hired by them through the outsource contractor. All their overheads expenses like conveyance, telephone, rent, travel, electricity, printing and stationery, vehicle hire, etc., for the office(s), transit house(s) and other places of establishment which the consultant may setup. All expenses to have approval of Reliance Industries Ltd.

c) The consultant shall submit budgets to RIL for the above expenditure at such frequencies as may be required by RIL and operate separate bank accounts for the RIL coordination work.

d) The consultant shall maintain proper books of account for RIL Coordination activities which will be subject to audit or scrutiny by or on behalf of RIL. The consultant shall also comply with all statutory obligations in respect of its activities relating to RIL."

3.2 It is seen from the conditions laid down in the agreement, assessee has to maintain proper books of account for RIL, operate separate bank account for the RIL coordination work and before incurring any expenses, approval of RIL has to be obtained. For reimbursement of the expenses incurred, the assessee would have made the correspondence with RIL such as taking approval before engaging any employee, furnishing budgets, maintaining separate books of accounts for RIL. These details could have been furnished during the course of original assessment proceedings as well as current assessment proceedings in support of his claim as the onus is on the assessee to prove his claim."

1 At the appellate stage, the appellant has submitted as under:- "3. Facts of the case in original order by AO:

A. That the Ld. AO has disallowed a sum of Rs. 2,74,76,043/- out of different head of expenses which was received by way of reimbursement by RIL. This disallowance is challenged in ground No 6 of the original grounds. The AO observed that the assessee received funds from the RIL at Rs. 2,83,83,450/- and incurred expenses of Rs.2,76,98,340/-.

B. That Ld. the AO admitted that the assessee has filed the confirmation letter of RIL showing the breakup of expenses of Rs. 2,76,98,340/-. He also admitted that in support, the assessee filed the original vouchers, later on, said voucher which were impounded by him with the object that the appellate authorities can examine the same. The AO further noted that the assessee was making payment to others against the bills raised in the name of RIL.

C. That the Ld. AO admitted in the assessment order that the assessee received Rs. 2,83,83,450/- from the RIL and incurred expenses of Rs. 2,76,98,340/- on behalf of the RIL for which the confirmation issued by the

RIL was filed by the assessee during course of assessment proceeding before him. Thus, the finding of the AO about the bogus expenses of Rs. 2,74,76,043/- is contradictory vis.-a-vis. the receipt of Rs. 2,83,83,450/-. Once, the receipt of Rs. 2,83,83,450/- from the RIL through banking channel, was accepted by the A.O., he was required to accept genuineness of the expenditure Rs. 2,74,76,043/- also, which were incurred on behalf of RIL. It is also evident from the Balance Sheet of the appellant that such receipt of Rs. 2,83,83,450/- was neither show as gift nor loan and advances. In substance, the receipt from RIL was by way of reimbursement of expenses and appellant remuneration. Hence, disallowance of expenses which was incurred on behalf of and on the direction of RIL was not justified. The basis on which the AO has made addition of the receipts received from RIL is the confirmation letter filed by the assessee during the course of original assessment proceedings but the AO has dis regarded the confirmation letter filed for giving allowances.

4. *Facts of the case in reassessment proceedings:*

As per the AO the assessee could not produce any documentary evidences in his support despite providing various opportunities, the allowability of expenditure could not be examined this time also.

In view of the above, an amount of Rs. 2,74,76,043/- is added back to the total income of the assessee.

5. *That further the appellant received reimbursement of expenses through banking channel from the RIL. The copy of bank account showing the receipt of reimbursement expenses are enclosed as Annexure. The said RIL has provided the confirmatory letters of reimbursement of expenses under different heads relating to aforesaid proprietary concern. The copy of confirmatory letters provided by the RIL is enclosed as Annexure.*

6. *That the RIL reimbursed the expenses to the appellant after deducting the taxes at source and provided the TDS certificates for which the credit was claimed by the appellant in his return. The copy of TDS certificates are enclosed as Annexure.*

7. *That the appellant had also paid the aforesaid expenses to the respective parties after making the necessary deduction of the taxes for which the TDS return was filed to the respective AO and the same are verifiable from the website Annexure.*

8. *That the appellant prepared the separate profit and loss account of the aforesaid proprietary concern and shown the income along with other professional income in the return. The books a/c of the assessee is audited. All the expenses are supported with bills and vouchers, which are impounded u/s 131 of the I.T Act., 1961. In addition to the above consultancy fees received from the RIL, the appellant has also shown the professional income derived from his practice.*

9. *That it is admitted that the RIL has paid Rs. 2,83,83,450/- to the appellant for making the expenditure on its behalf and the appellant had made the payment of Rs. 2,76,98,340/- under different heads on the direction of RIL and the same was confirmed by the RIL. On the contrary, Ld. A.O. was required to allow the whole expenses incurred on behalf of RIL, which was received by way of reimbursement. Thus, the A.O. was not justified to disbelieve the expenditure and disallow the sum of Rs. 2,74,76,043/- under different heads.*

That the AO above observation is factually correct as the appellant was not doing his own business but it was making payment on behalf of and on the direction of RIL. Further, the AO observation, "the assessee could not substantiate that the expenses claimed were incurred for his own business/ profession" is also factually correct and as the appellant has incurred the expenses on the direction of the RIL and such RIL has confirmed these expenses. The bills / vouchers maintained in this regard were produced before the A.O. Since all the expenses were incurred on the direction of and on behalf of RIL and the said RIL has confirmed the expenses under different heads. Thus, there was no need to substantiate the expenses as his own business expenses separately. The RIL has also reimbursed the expenses and such receipt, i.e., the reimbursement of expenses cannot be treated as income of the appellant.

11. *It is pertinent to mention here that the assessee has got relief on the same set of facts wherein the nature of expenses was identical to the impugned year in the appeal. The assessee in the A.Y 2006-07 got relief from CIT(A) on the disallowance of expenses made by the Assessing Officer. The copy of CIT(A)'s order is annexed herein as Annexure.*

Further, Revenue filed appeal before Income Tax Appellate Tribunal against the order of CIT (A). The TTAT vide order dated 19.06.2013 confirmed the order of CIT(A) in favour of the assessee where he was allowed expenses. The copy of the said order is annexed herein as Annexure.

It is also submitted that the assessee has incurred same nature of expenses on behalf of RIL in the assessment year 2009-10. The Assessing Officer inquired about the nature of expenses and upon being satisfied with the explanation of the assessee, he made no disallowance for the expenses. The copy of the said order is annexed here as Annexure.

It is therefore submitted that the addition on account of expenses incurred on behalf of RIL are of the same nature as the years mentioned above where assessee has been granted relief.

12. *That the Ld. AO has correctly admitted that the assessee has received the full payment from the RIL by way of reimbursement of expenses. Though he did not give any finding that such receipt by way of reimbursement was a taxable income yet by disallowing the expenses which was paid to different persons under different heads on behalf of and on the direction of said RIL, has become the taxable income impliedly. Thus, the action of the AO treating the reimbursement of expenses as income is against the finding of the Jurisdictional High Court decision in the case of CIT Vs Fortis Health Care Ltd, IT A No. 8 of 2009 as reported in 181 Taxman 257(enclosed as Annexure). In this case also the receipt by way of reimbursement of expenses from Specialty Ranbaxy Limited (SRL) by the Fortis Healthcare Ltd. was held as not an income but it was treated as an expenses.*

That the fact of appellant case is very similar to the case forties Healthcare Ltd. (Supra). In the appellant's case also, the Ld. A.O. impliedly assessed the income of Rs. 2,74,76,043/- which was received by way of reimbursement of expenses. Thus, the A.O. was not justified to assess the income by way of disallowance of expenses, which were received as reimbursement. For the sake of convenience, the relevant portion i.e. Para 6 of the order of Hon'ble Jurisdictional High Court decision is reproduced below:

"The assessee being aggrieved preferred an appeal to the CIT(A). The CIT(A) by an order dated 24-12-2004 allowed the appeal with respect to the issue in

hand and deleted the addition made by the Assessing officer. The CIT(A) in its order returned a finding of fact that a reading of the agreement made it clear that the money received was for sharing of common services, and that services provided by the assessee were purely based on reimbursement of cost on which the assessee had incurred an equivalent amount of expenditure. The CIT(A) further held that in case, even if, it is presumed that sum of Rs.18 lakhs could be brought to tax as income from other sources then, the amount of expenditure incurred which is equivalent to the amount received will have to be set off on account of the fact that there was a direct nexus between what was received that which was expended. The observations to this effect are found in para 2,3 of the order of the CIT(A)."

That Hon'ble Jurisdictional High Court in the case of CIT Vs. Industrial Engineering Products (P) Ltd. 202 ITR 1014 (Delhi) (Annexure) by following the judgment of the Supreme Court in the case of CIT vs. Tejaji Farasram Kharawalla Ltd. (1968) 67 ITR 95 (SC) in which it was held, "to the extent of the receipt representing reimbursement of the expenses the same are not taxable" ruled that reimbursement of expenses under no circumstances as revenue receipt. The appellant further rely on the decision of 7/ Bench of ITAT Mumbai in the case of Deputy Director of Income Tax vs. M/s Chubb Pacific Underwriting Management Services Pvt. Ltd., ITA No. 2501/Mum/2007 Assessment Year: 2003-04, 2009-TIOL-730-ITAT-MUM (Annexure)

That relying on the judgments of CIT Vs. Industrial Engineering Products (P) Ltd. 202 ITR 1014 (Delhi), CIT vs. Dunlop Rubber Co. Ltd. (1983) 142 ITR 493 (Cal) and CIT vs. Stewarts & Lloyds of India Ltd. (1987) 165 ITR 416 (Cal) the Hon'ble Bombay High Court in the case of CIT vs. Siemens Aktiengesellschaft (2009) 310 ITR 320 (Bom) (Annexure), held, "payment by way of reimbursement of expenses incurred on behalf of payer is not income chargeable to tax in the hands of payee."

That, the action of Ld. A.O. by disallowing the expenses which was reimbursed by the RIL has become taxable income which was not permissible in the light of several judgments inclusive of the Jurisdictional High Court and the Apex Court. It is also relevant to mention that there are case laws preventing the authority from levying the tax from indirect modes, though the same was permissible directly. The court observed, whatever can not be done directly the same can not be done indirectly. Hence, the action of the A.O. by disallowing the expenses which was incurred out of receipt by way of reimbursement is equal to assessment of reimbursement of expenses as taxable income. Thus, the action of the A.O. is not permissible in the eye of law.

That though the appellant could not get any contradictory decision on this issue yet if there is any decision found to be contradictory, even then in the light of CIT vs Vegetable Products Ltd. (1973) 88ITR192SC, (Annexure) the decision favorable to the assessee must be followed. The Hon'ble Apex Court in the case of Vegetable Products Ltd. ruled, "If two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted. This is well acceptable of construction." Moreover, the Jurisdictional High Court and the Apex Court in several cases as cited in preceding para have held that the reimbursement of expenses cannot be taxed as income of the assessee. In this situation, if at all contradictory decision is found, the same cannot be applicable to the appellant.

That in addition to above arguments, it is further brought to your kind notice that the above disallowance was based on suspicion and as a guess work without having any supporting evidence and material. Hence, these

disallowances can not be sustained in the light of landmark decision of the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Limited Vs. CIT 26 ITR 775 (SC), (Annexure) the additions/disallowances based on surmises, suspicion and conjectures were held as unjustified and the same were deleted. For the sake of convenience of your good self, the relevant portion of the finding of this case is quoted below:

"Where both the ITO and the Tribunal in estimating gross profit rate on sales did not act on any material but acted on a pure guess and suspicion, it was a fit case for the exercise of power under Art, 136."

14. That all the expenses shown in the profit and loss account was incurred for the business purpose and also for the 'commercial expediency'. These expenses were incurred on behalf of the RIL and the same were reimbursed by the said RIL. The appellant was deputed by the RIL to incur such expenses on its behalf for which the appellant has received remuneration, which was shown in the profit and loss account. All the receipt and expenses were routed through banking channel. Hence, disallowance of expenses to extent of Rs.2,74,76,043/-is unjustified and liable to be deleted.

15. That the Ld. A.O. accepted the receipt from the RIL but disallowed the expenses, which were incurred on behalf and also on the direction of RIL. Thus, the action of the A.O. is contradictory, unjustified and illegal. If at all it was bogus expenses that may be a bogus expense of the RIL and not of the appellant. The Ld. A.O. failed to verify the fact of receipt from the RIL and payment made on the direction and on behalf of RIL. Thus, the receipt from the RIL and expenses incurred on behalf of and on the direction of RIL is allowable in the case of the appellant.

16. That it is true that the appellant had made the payment on behalf and on the direction of the RIL. Consequently, the RIL had reimbursed the expenses otherwise there was no occasion for reimbursing the expenses by RIL, had it been appellant own expenses. It is further brought to your kind notice that the RIL had not only reimbursed the expenses but it had made the excess payment for meeting out the appellant own expenses while doing the RIL work. It is evident from the assessment order page 11 that the assessee has incurred expenses Rs. 2,76,98,340/- on behalf of and also on the direction of RIL while the said RIL have reimbursed the expenses to the extent Rs. 2,83,83,450/-."

8.2 Further, the appellant has submitted before me an order of Hon'ble ITAT, Delhi Bench 'A' dated 19.06.2013 in the case of appellant's brother, Sh. Anish Kumar Gupta for AY 2006-07. From the Hon'ble Tribunal's order, it is noted that Ld. CIT(A) had decided the issue as under:-

"Findings I have gone through the order of the Assessing Officer and written submission of the appellant. I have also perused the case Laws relied upon by the appellant. Following facts emerge from the order of the Assessing Officer and submission of the appellant.

1. The appellant is a CA and derives income from profession and remuneration for management consultancy services from Reliance Industries Limited (RIL). The appellant maintains books of accounts which were audited u/s 44AB of the I.T Act. The appellant had filed return showing the income of Rs. 2,77,320/- which was assessed vide order dated 29.12.2008 passed u/s 143(3) determining the income of Rs.24,11,500/-.

2. The appellant have constituted three proprietorship business concerns

namely, M/s Arnav Liasioning 85 Coordination Services, Delhi, M/s Arnav Research and Consultancy Services, Jaipur and M/s Arnav Consultancy Services, Lucknow. He entered into an agreement with RIL in the name of aforesaid three proprietorship concerns and as per para 2.1 of the agreements, and received consultancy fees Rs. 10000/-, Rs. 5000/- and Rs. 5000/- per month respectively in aforesaid concerns. In addition to aforesaid remuneration, as per para 2.2 of the said agreements, the appellant received the reimbursement of actual expenses incurred on behalf of the RIL. The relevant portion of agreement of para 2.1 and 2.2, which are identical in all the concerns is reproduced.

"ARTICLE 2- CONSIDERATION/PAYMENT

2.1 In consideration of the consultant having agreed to render/provide Consultancy services to RIL on the terms and conditions as set out in this Agreement, RIL shall pay a consultancy fee of Rs. 5000.00 per month (Rupees Five Thousand) to the consultant within 10 days from the receipt of a monthly invoice for the agreement period from 1.7.2005 to 31.12.2005.

2.2 In addition to the above, the Consultant shall also be entitled to reimbursement of the actual expenses, incurred by the Consultant/its officials and any other outside agency/ consultant appointed by the consultant on rendering of the consultancy Services including telephone, travelling, hotel accommodation, local conveyance, etc. in discharge / performance of the obligations under this Agreement. Such reimbursement of expenses duly supported shall be made within 30 days of a monthly invoice being raised by the Consultant, which if required, can only be raised by mutual consent."

The appellant has placed reliance in the case of CIT Vs Fortis Health Care Ltd, ITA No. 8 of 2009 as reported in 181 Taxman 257 (enclosed as Annexure-11). Wherein the receipt by way of reimbursement of expenses from Specialty Ranbaxy Limited (SRL) by the Fortis Healthcare Ltd. was held as not an income but it was treated as an expenses. The fact of appellant's case is similar to the case cited above to the extent that appellant also incurred the expenses on behalf of RIL and received the same by way of reimbursement of expenses. To assess the income by way of disallowance of expenses on adhoc basis which were received as a reimbursement is unjustified. The relevant portion i.e. Para 6 of the order of Hon'ble jurisdictional High Court decision is reproduced below:

"The assessee being aggrieved preferred an appeal to the CIT(A). The CIT(A) by an order dated 24-12-2004 allowed the appeal with respect to the issue in hand and deleted the addition made by the Assessing officer. The CIT(A) in its order returned a finding of fact that a reading of the agreement made it dear that the money received was for sharing of common services, and that services provided by the assessee were purely based on reimbursement of cost on which the assessee had incurred an equivalent amount of expenditure. The CIT(A) further held that in case, even if, it is presumed that sum of Rs. 18 lakhs could be brought to tax as income from other sources then, the amount of expenditure incurred which is equivalent to the amount received will have to be set off on account of the fact that there was a direct nexus between what was received that which was expended. The observations to this effect are found in para 2, 3 of the order of the CIT (A)."

The AO did not dispute the completeness and correctness of the books of accounts and without invoking the provision of section 145 of the IT Act, he disallowed expenses of Rs. 21,34,181/- out of different heads. The disallowance made by the AO without invoking the provision of section 145 is

unjustified."

8.3 *In the above case, on appeal by the department, Hon'ble ITAT upheld the appellate order by observing as under:-*

"6. Having heard the rival contentions in the light of the material available on record, we find that it was in consonance with the assessee's agreement with RIL that he had received consultancy fees' in his three concerns. He had also received reimbursement of actual expenses incurred on behalf of RIL. The Assessing Officer doubted these expenses and dubbed them to be inflated. As to how it was so, was nowhere delineated in the assessment order and the Assessing Officer made adhoc disallowances @ 10% and from 20% to 25% respectively, in some cases. This was done without assigning any reason whatsoever, overlooking the fact that the reimbursement by RIL to the assessee was through banking channel and the payment of the expenses to the respective parties had also been made by the assessee through cheques. Besides, the expenses were duly supported, by bills and vouchers which had been filed before the Assessing Officer and which were not either disputed or even test checked. The books of account of the assessee were audited u/s 44AB of the IT Act. The correctness and completeness of the books of account was nowhere challenged by the Assessing Officer. Even so, the Assessing Officer made the adhoc addition of Rs. 21,34,181/-, disallowing the expenses under different heads on a presumptive basis. This addition was entirely unsustainable in the eye of law and the Ld. CIT(A) has correctly deleted the same, duly taking into consideration the aforesaid position and the fact that all the expenses in question stood incurred for business purposes by the assessee on behalf of RIL and it was these expenses which were reimbursed by RIL to the assessee. The payments had been made by the assessee to the parties on due TDS, as available from the bank statements and the TDS was deposited with the TDS Ward.

7. In view of the above, finding no error whatsoever therein, the order of the Ld. CIT(A) is upheld and the grievance raised by the Department is rejected."

8.4 *I have considered the submissions made and documents produced by the appellant: I have perused the agreement entered by the appellant with M/s Reliance Industries Limited, confirmation as given by M/s RIL and considered the fact that TDS was duly deducted by RIL on payments made to the appellant.*

8.5 *It Is also pertinent to mention that in the original assessment order as well as the impugned assessment order, the Assessing Officer has mentioned that books and vouchers could not produced by the appellant. The appellant has however submitted during the appellate proceedings that the books and vouchers were impounded by the Assessing Officer on 19.12.2009.*

8.6 *In view of above observations, the facts for the current year being similar to those of AY 06-07 in the case of Sh. Anish Kumar Gupta, respectfully following the decision of Hon'ble ITAT, I delete the addition.*

8.7 *Ground No. 6 is allowed."*

17. The issue has been adjudicated by the CIT(A) in sync with the decision of the Co-ordinate Bench of Tribunal in ITA No5395/Del/2011 for Assessment Year 2006-07, order dated

19.06.2013 concerning to assessee, Mr. Anish Kumar Gupta. We find that the CIT(A) has examined the issue threadbare and adjudicated the issue raised by the revenue in tune with the decision of the Co-ordinate Bench of the Tribunal. We thus see no perceptible reason to take a different view. The Revenue has not shown any distinguishing features in the present case either. We thus decline to interfere.

18. The appeal of the Revenue is dismissed.

19. The identical controversy emanates from the all the appeal of the revenue in case of both the captioned assessee and thus deserves to similarly treated.

20. In the result, all the appeal of the revenue are dismissed on this score.

21. All the captioned appeals of both the assesseees are partly allowed whereas all the Revenue's appeals are dismissed.

Order pronounced in the open Court on 31/08/2022.

Sd/-
[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

DATED: **31/08/2022**

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER