

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'H' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND**

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.6602/Del/2019, A.Y. 2016-17

Thakur Vaidyanath Aiyar & Co. 221-223, Deen Dayal Upadhyaya Marg, New Delhi PAN : AAFT3096M	Vs.	Addl. CIT, Circle 61(1), Room No. 20 th Floor, Civic Centre, 'C' Block, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Sanjay Jain, CA
Revenue by	Sh. Parikshit Singh, Sr. DR & Sh. Kanv Bali, Sr. Dr

Date of hearing:	13.01.2023
Date of Pronouncement:	21.02.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the assessee against order dated 25.06.2019 in appeal no. 10205/2018-19 in assessment year 2016-17 passed by Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 26.12.2018 u/s 143(3) of the Income Tax Act, 1961 passed by ACIT, Circle 61(1), Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The assessee has come in appeal raising following grounds :-

“1. That the Id. CIT(A) as well as A.O. have erred in adding a sum of Rs. 87,800.00 to the Returned Income being the TDS payable as on 31.3.2016.

2. That the provisions of section 43B have the over ridding effect over all other provisions of the Income Tax Act and thus the TDS deposited within the due date of filling of Income Tax Return is fully deductible

3. That in the alternative the TDS outstanding on the last day of the previous year and deposited in current financial year be allowed as deduction.

4. That the Id. CIT(A) as well as A.O. have erred in adding a sum of Rs.4,43,348.00 on account TDS & Income mismatch of Rs. 10,18,500.00 without appreciating that the assessee is maintaining accounts under cash system and only the income received is credited to the Income Account.

5. That there is no mismatch of TDS and corresponding Income as the assessee is following cash system of accounting and the income has been credited to income account when received in subsequent financial year and appropriate reconciliation filed.

6. That the Id. A.O. has grossly erred in adding a sum of Rs.2,09,181.00 being 10% out of travelling expenses on surmise and conjecture.

7. That the Assessment Order is bad in law and facts of the case.

8. That the above Grounds of Appeal are without prejudice to one another.

9. Your appellant prays that he be allowed to add, amend or withdraw any of the above Grounds of Appeal at the time of hearing.”

3. Heard and perused the record and the ground wise findings are as below.

4. **Ground No 1 to 3;** Return of income was filed by the assessee declaring a total income of Rs. 1,20,21,590/-. The assessee is a Chartered Accountant Firm and derived its Income from Business or Profession and income from

other sources. The case was selected for compulsory manual scrutiny. The balance sheet submitted by the assessee as on 31.03.2016, the assessee had shown following current liabilities payable :

1. TDS payable : Rs. 87,800/-
2. Service Tax : Rs. 12,38,907

Ld. AO observed that the above mentioned statutory liabilities payable are a part of the expense which the assessee has claimed as expenditure in his P & L account. As the assessee is following cash system of accounting whereby only payments which have been made during the year can be claimed as expense and thus, these expenses which have not been paid cannot be allowed as an expense. After taking the reply of assessee, the Ld. AO had made addition of Rs. 13,26,708/- being the total two components, TDS payable and service tax. In appeal the issue of component of service tax addition was restored to the files of Assessing Officer as the assessee had submitted that Rs. 11,16,399/- were deposited before due date of filing of return. However, Ld. CIT(A) had sustained TDS payable addition of Rs. 87,800/- with the following findings :-

“6.2.1 The Assessing Officer during scrutiny found that the appellant has claimed an amount of Rs. 87,800/- as TDS payable. The Assessing Officer further found that the assessee has paid certain amounts on which TDS was deductible, the assessee had claimed such amounts in its P&L account but the TDS deductible was not paid to the Govt, account within the financial year though it was paid to the Govt, before due date of filing of Return. The Assessing Officer further stated that only the TDS payable component is being disallowed by him and not the entire expenses for non deduction of TDS. As per provisions of sec. 43B of the Act, the deduction in respect of taxes would be allowed in the year in which it is incurred and TDS payable which has not been paid in the current financial year is not an allowable expenses in this year. Since the appellant is following cash system of accounts TDS deductible cannot be allowed.

6.2.2 *The appellant during appeal hearing submitted that the provisions of Sec. 43B of the act over-right all provisions of Income Tax Act and as per Sec. 43B the amount should be allowable to the appellant. The appellant has also submitted the decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Rajinder Kumar (supra) where the Hon'ble Delhi High Court have decided that the Assessing Officer was not justified in invoking Sec. 40(a)(ia) of the act in the case.*

6.2.3 *I have carefully perused the order of the Assessing Officer and the submission of the appellant. The Assessing Officer has disallowed TDS payable as the appellant is following cash system of accounting. The Assessing Officer has not invoked provisions of Sec. 43B or Sec. 40(a)(ia) of the Act. The Assessing Officer has not disallowed the expenses claimed by the appellant as paid u/s 40(a) (ia) of the Act for non deduction of TDS. As per provisions of Sec. 43B Any sum payable by the assessee by way of tax, duty, cess or fee by whatever may called under any law for the time being in force..... mean that any tax, duty, cess payable by the assessee, but in the instant case the tax is not payable by the assessee rather the tax is to be paid or payable by the person who has received the amount. The job of the appellant was only to deposit the tax amount in the Govt, account. TDs deducted by the assessee can only be claimed by him when the same is deposited to the Govt. account. The action of the Assessing Officer on this issue is therefore sustained.”*

5. It was submitted on behalf of the assessee that the issue stands decided in favour of the assessee in assessee's own case of the assessment year 2013-14, 2014-15 and 2015-16. Ld. DR could not dispute the fact and cite any other relevant proposition of law to distinguish the findings in favour of the assessee in its own case.

6. It can be appreciated from the record that at page no 38 to 45 of PB the Assessee has placed a statement of all the TDS paid with copies of their challan showing that 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. In this

context in para no. 7 of ITA no. 6986/Del/2017 for A.Y. 2013-14, in assessee's own case the Co-ordinate Bench has held :-

“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 Rajnder 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.”

Thus, the findings of Ld. CIT(A) or the Ld. AO cannot be sustained. The grounds are determined in favor of assessee. **The Ld. AO shall delete the addition of Rs. 87,800/-.**

7. **Ground No 4 & 5;** In regard to these grounds it can be observed that the Ld. AO was of opinion that assessee had failed to prove its contention of income of Rs10,18,500/- against undisclosed TDS of Rs 1,01,850/-. The Ld. CIT(A) had also observed that appellant has not furnished details. Assessee has claimed that it is maintaining cash system of accounting and claims that income has been credited to accounts when received in subsequent financial year. On behalf of the assessee at page no. 2 of the paper book statement of difference and reconciliation of TDS as per 26 AS vs. ITR for A.Y. 2016-17 has been filed. Assessee has also filed details of receipt in subsequent year along with copies of bills raised and the receipt in Bank Account. The same require

verification. So the issue is restored to the files of Ld. AO who after giving opportunity to the assessee make a verification of statement of difference and reconciliation of income corresponding to Tax credit statement as per 26 AS vs. ITR for A.Y. 2016-17 and accordingly the grounds are allowed for statistical purposes.

8. **Ground no. 6;** There has been an adhoc disallowance of the travelling expenses for want of evidence to establish that the expenses were wholly and exclusively for the business. The Id. CIT(A) has also sustained the disallowance to the extent of 10% on assumption that the expenses could have been for purposes other than the business. The Bench is of view that such adhoc allowances without any inquiry and evidence is not sustainable. Such disallowances earlier made in assessee's case for the year 2014-15 and 2013-14 were deleted as there was no case of revenue that the expenses were disproportionate to the income earned or professional activities carried by the assessee. Accordingly, this ground is sustained. **The Ld. AO shall delete the impugned disallowance.**

9. The remaining grounds no. 7, 8 and 9 being superfluous are disposed off not pressed.

10. As a consequence of above determination of ground no. 1, 2, 3 and 6 in favour of the assessee and ground no. 4 and 5 in favour of assessee for statistical purposes. **The appeal of assessee is allowed.**

Order pronounced in the open court on 21st February, 2023.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Date:- 21.02.2023

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