IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI

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

आ.अ.सं/.I.T.A No.4701/Del/2018
निर्धारणवर्ष/Assessment Year:2011-12

ACIT Circle 61(1), Room No. 2005, 20th Floor, Block E-2, Dr. Shyma Prasad Mukherjee, Civic Centre, New Delhi.	बनाम **Vs.**	Om Prakash Khaitan B-1, Defence Colony, New Delhi.
		PAN No. AHJPK7370H
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

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आ.अ.सं/.I.T.A No.4702/Del/2018
निर्धारणवर्ष/Assessment Year:2013-14

ACIT Circle 61(1), Room No. 2005, 20th Floor, Block E-2, Dr. Shyma Prasad Mukherjee, Civic Centre, New Delhi.	बनाम **Vs.**	Om Prakash Khaitan B-1, Defence Colony, New Delhi.
		PAN No. AHJPK7370H
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

निर्धारितीकीओरसे **/Assessee by**	**Shri S.P. Aggarwal, CA**
राजस्वकीओरसे **/Revenue by**	**Ms. Sarita Kumar, CIT DR**

सुनवाईकीतारीख/ Date of hearing:	27.04.2023
उद्घोषणाकीतारीख/Pronouncement on	28.04.2023

आदेश /O R D E R

PER N.K. BILLAIYA, A.M.

These are two separate appeals by the Revenue preferred against two separate orders of the Ld.CIT(Appeals)-25, New Delhi dated 22.02.2018 pertaining to AYs 2011-12 & 2013-14.

2. Since common grievance is involved in both these appeals, they were heard together and were disposed of by this common order for the sake of convenience and brevity. The common grievance in both these appeals relates to (i) deletion of the addition on account of credit balances in assessee's client accounts and (ii) part deletion of the addition on account of disallowance u/s 14A of the Act.

3. At the very outset, the Counsel for the assessee stated that both the issues raised by the Revenue have been decided by this Tribunal in assessee's own case in favour of the Assessee and against the Revenue since AYs 2001-02 to 2009-10. The Counsel further pointed out that the order of the Tribunal in AY 2009-10 was affirmed by the Hon'ble Delhi High Court. Though the DR could not bring any distinguish decision in favour of the assessee but strongly relied upon the assessment order.

4. We have carefully perused the orders of the authorities below and have duly considered the decision of the coordinate bench. We find that the quarrel relating to the addition on account of credit balances in assessee's client accounts is concerned it is coming from AY 2001-02 and thereafter in AYs 2003-04 and 2009-10. This Tribunal in ITA No. 360/Del/2013 for AY 2009-10 has considered the similar grievance and has decided as under: -

> *"7. The Ld. Counsel for the assessee, on the other hand, has placed strong reliance on the impugned order. Besides, reliance has also been placed on composite Tribunal order*

dated 23.05.08, in the assessee's own case for 2001-02 and 2003-04 (copy at APB B-45 to B-47).

8. We have heard both the parties and have perused the material on record. Undisputedly, the assessee has been consistently following the cash system of accounting for the firm of Solicitors and Advocates. The firm received advances from its clients against various legal matters for meeting out of pocket payments towards expenses of various kinds. Such advance receipts were kept in a separate ledger account in the name of the clients. All the expenses were debited therein from time to time. At the year end, credit balances in the accounts where the matters stood completed or settled, were transferred to the Profit & Loss Account. Where the matter was pending, the credit balances were carried forward to the next year and shown as sundry creditors. Additions similar to the one presently before us were made in the assessee's case for AY 2001-02 and 2003-04 also. The matter travelled upto the Tribunal. The Tribunal, vide its aforesaid order dated 23.5,08, confirmed the CIT (A)'s action in deleting the additions for both the years. While doing so, the Tribunal order dated 3.2.06, rendered in ITA No.1765/Del/2002, in the case of 'Jitender Sharma vs. DCIT' and that dated 25.8.06 in 1TA No.3820/Del/2004, in the case of 'M/s Anand & Anand', were followed to hold that even if the assessee was following the cash system of accounting, every receipt cannot be considered as income; that the receipt will be income, provided the assessee has a right to receive the same on his own account; and that so long as the assessee is answerable to the clients for receipt of advance and in respect of which the work of the client has not been completed, the receipt cannot be branded as income even where the assessee is following the cash system of accounting. In the case of 'Jitender Sharma' (supra), as noted by the Tribunal in the assessee's case for AYs 2001-02 and 2003-04, it was held as follows:-

> *"On due consideration of the matter, we delete the entire addition for the reasons that follow. It is true that the assessee is following cash system of accounting. Under this system, the assessee has to account for all the incomes received during the year irrespective of the fact whether they have accrued to the assessee or not. However, it is equally true that every receipt is not an income. A receipt to be accounted as an income must bare the character of an income and then only it can be treated as such in the year of receipt under the cash*

system of accounting. It was in this context, the Supreme Court in KCP Ltd. (supra) held that if a receipt is a trading receipt, the fact that it is not so shown in the account books of assessee would not prevent the assessing authorities from treating it as a trading receipt. Thus, the emphasis of the Supreme Court was on the principle that the receipt must be a trading receipt. In the instant case, the advance received by the assessee does not bear the character of a professional fee. It is merely an advance out of which many expenses may have to be incurred before the matter gets finally concluded. These expenses may be in the form of' court fees, photo copying expenses, counsel's fees etc. At times, it may so happen that the entire advances may be consumed for expenses, in that event, it would be improper to attach the characteristic of an income to the advance receipt. If part of the advances is consumed for expenses and if a portion is adjusted as fees, then it is only that portion which is characterized as fees, can be taken as income. The characterization of the receipt can take place only at the time of appropriation i.e., in cast; of fees only when the matter is over and the assessee decides upon the quantum of fees. Therefore, it would be inappropriate to treat the entire advance as fees In the year of its receipt when It does not bear any particular characteristic. This cannot be termed as a mixed system of accounting as has been held by the CIT (A). It has to be borne in mind that when a lawyer receives money from his clients, he does not do so as a trading receipt but he receives the money in his capacity as an agent and that also in a fiduciary capacity, it does not have any profit making quality about it when received. It remains money received by a lawyer as "client's money" for being employed in the client's cause. The lawyer remains liable to account for this money to his-client. This is the gist of the judgments relied upon by the learned Counsel. Therefore, in the light of the aforesaid discussion, we delete the addition of Rs. 10,59,454/-."

9. As noted above, the addition for the year under consideration is similar to the ones made for AY 2001-02 and 2003-04. Nothing has been brought N before us to differ from the view taken by the Tribunal in the assessee's own case for those years. Even though res judicata is not applicable to income-tax proceedings as rightly contended by the department the principle of consistency requires that unless

> *facts or law have/has undergone a change, the view taken earlier under similar circumstances needs must be followed.*
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> *10. Therefore, finding no merit therein, Ground Nos. 1 to 5 are rejected."*

5. This order of the coordinate bench was challenged before the Hon'ble Delhi High Court and the Hon'ble High Court of Delhi in ITA No. 416/2015 order dated 21.07.2015 affirmed the order of the coordinate bench.

6. Respectfully following the decision of the coordinate bench viz-a-viz the decision of the Hon'ble Delhi High Court ground no. 1 is dismissed.

7. In so far the second grievance relating to the disallowance u/s 14A is concerned the same has also been considered by the Hon'ble High Court of Delhi in ITA No. 416/2015, wherein the Hon'ble High Court has held as under: -

> *"9. As regards the second issue concerning the disallowance under Section 14A of the Act, the ITAT noticed the decision of its co-ordinate Bench in Justice Sam P. Bharucha v. Addl, Commissioner of Income Tax, Mumbai 25 Taxmann.com 381 (Mum)and observed that in the present case, the AO had not recorded any finding that any expenditure incurred by the Assessee was attributable for earning the exempt income. In order to disallow the expenditure there must be a nexus between the expenditure incurred and the income not forming part of the total income. Consequently, the disallowance under Section 14A of the Act was rightly deleted by the CIT (A) and affirmed by the ITAT.*
>
> *10. The Court finds that no substantial question of law arises for determination by the Court from the impugned order of the ITAT."*

8. Respectfully following the decision of the Hon'ble Jurisdictional High Court (supra), we decline to interfere with the findings of the CIT(A), ground no. 2 is also dismissed.

9. In the result, both the appeals by the Revenue are dismissed.

Order pronounced in the open court on 28/04/2023

Sd/- **(ANUBHAV SHARMA)** **JUDICIAL MEMBER**	Sd/- **(N.K. BILLAIYA)** **ACCOUNTANT MEMBER**

Dated: 28.04.2023
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi