

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1661/Mum/2023
(Assessment Year: 2019-20)

Vijaykumar Vaidheeswaran Iyer 73, Jupiter Apts., 41, Cuffe Parade, Mumbai-400 005	Vs.	Asst. Director of Income Tax, Centralized Processing Centre, Bengaluru, Karnataka-560 500
PAN/GIR No. AAAP1 2589 N		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Ninad Patade
Revenue by	:	Shri Ujjwal Chavan
Date of Hearing	:	16.08.2023
Date of Pronouncement	:	22.08.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2019-20.

2. The assessee has challenged the disallowance of Rs.49,38,388/- made u/s. 40(a)(ia) of the Act being the TDS deducted and paid during the Financial Year 2018-19, Assessment Year 2019-20 but relevant to A.Y. 2018-19.

3. The brief facts are that the assessee is an individual and had filed his return of income dated 30.10.2019, declaring total income of Rs.41,57,590/- and the same was processed u/s. 143(1) of the Act. The Assessing Officer ('A.O.' for short)/Central

Processing Centre ('CPC' for short) vide intimation dated 08.06.2022 had disallowed the credit for TDS claimed by the assessee amounting to Rs.2,82,18,874/- and had restricted the credit to Rs.2,76,42,874/- thereby restricting the refund to Rs.2,78,80,566/- as against the refund of Rs.2,84,56,570/- as per the return of income filed by the assessee.

4. The assessee was in appeal before the Id. CIT(A) challenging the addition/disallowance made by the A.O./CPC.

5. The assessee by way of additional ground of appeal had challenged the disallowance made u/s. 40(a)(ia) of the Act pertaining to A.Y. 2018-19 to be allowed during the year under consideration i.e., A.Y. 2019-20.

6. The Id. CIT(A) rejected the additional ground raised by the assessee on the ground that the assessee has not claimed the said amount in his return of income nor was it claimed before the A.O. after issuance of notice u/s. 143(1)(a) of the Act.

7. Further aggrieved the assessee is in appeal before us, challenging the impugned disallowance u/s. 40(a)(ia) of the Act.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that during A.Y. 2018-19, the assessee was not entitled to deduct TDS and in the subsequent year, i.e., A.Y. 2019-20, the assessee had paid TDS amounting to Rs.49,38,388/-. The Id. AR further contended that the lower authorities have rejected the claim of the assessee for the reason that the said claim was not made in the return of income nor was it raised before 143(1) proceeding before the A.O. The Id. AR stated that this issue in A.Y. 2018-19 was pending adjudication and prayed that the credit of the

impugned amount has to be allowed during the year under consideration if the same is not allowed in the A.Y. 2018-19.

8. The learned Departmental Representative ('Id. DR' for short), on the other hand, controverted the said fact and stated that since the assessee has not claimed the said deduction in its return of income, the same cannot be claimed by the assessee during the impugned year. The Id. DR further stated that the Id. CIT(A) has rightly rejected the additional ground raised by the assessee for the reason that this issue was not before the A.O. in 143(1) proceeding. The Id. DR relied on the order of the Id. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. It is observed that the A.O. for A.Y. 2018-19 vide order dated 12.02.2022 passed u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act had disallowed the impugned amount of Rs.49,38,388/- pertaining to the professional fees of Rs.1,64,61,292/- paid by the assessee u/s. 40(a)(ia) of the Act. The assessee was in appeal before the Id. CIT(A), challenging the impugned disallowance made u/s. 40(a)(ia) of the Act, pertaining to A.Y. 2018-19. The assessee during the year under consideration, i.e., A.Y. 2019-20 had raised an additional ground before the first appellate authority to allow the claim of deduction amounting to Rs.49,38,388/- being 30% of the professional fees of Rs.1,64,61,292/-, during the impugned year for the reason that the assessee had paid TDS during A.Y. 2019-20. The assessee without prejudice to the appeal pending before the appellate authority for A.Y. 2018-19 had sought for the said deduction during the impugned year, along with the other regular grounds of appeal. The Id. CIT(A) has rejected the additional ground raised by the assessee for the reason that the assessee has not claimed the said

amount in his return of income and for the reason that the said issue was not before the Id. A.O. during issuance of notice u/s. 143(1)(a) of the Act for the year under consideration. On perusal of the materials available on record and on hearing the rival contentions, we deem it fit to remand this issue back to the file of the Id. A.O. to verify the fact that the assessee has paid the said TDS amount for the professional fees paid by the assessee. The Id. A.O. is also directed to allow deduction of the said amount after verifying the fact that the same was not allowed during A.Y. 2018-19 and to ensure that the assessee has not claimed double deduction for both the years, i.e., A.Y. 2018-19 and 2019-20, subject to the outcome of the appeal preferred by the assessee for A.Y. 2018-19. Hence, this issue is remanded back to the file of the Id. A.O.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 22.08.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 22.08.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai