

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 466/Bang/2023
Assessment Year : 2018-19

M/s. Knowledge Hut Solutions Pvt. Ltd., No. 10, 14 th Main Road, Hosur Sarjapura Road, Bangalore – 560 102. PAN: AAECC4762E	Vs.	The Deputy Commissioner of Income Tax, Circle - 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

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ITA No. 281/Bang/2023
Assessment Year : 2018-19

M/s. Knowledge Hut Solutions Pvt. Ltd., No. 10, 14 th Main Road, Hosur Sarjapura Road, Bangalore – 560 102. PAN: AAECC4762E	Vs.	The Deputy Commissioner of Income Tax, NFAC, Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri P. Murali Mohan Rao, CA
Revenue by	:	Shri Nischal .B, Addl. CIT (DR)

Date of Hearing	:	13-09-2023
Date of Pronouncement	:	21-09-2023

ORDER**PER MADHUMITA ROY, JUDICIAL MEMBER**

The instant appeals filed by the assessee are directed against the order dated 16.01.2023 passed by the NFAC, Delhi arising out of the order dated 04.11.2019 passed by the Ld.DCIT, CPC, Bangalore u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2018-19 and against the order dated 18.01.2023 passed by the NFAC, Delhi arising out of the order dated 12.03.2021 passed by the National e-Assessment Centre, Delhi u/s. 143(3) r.w.sections 143(3A) & 143(3B) of the Act for A.Y. 2018-19 respectively.

2. Since both the matters relate to the same assessee, these are heard analogously and are being disposed of by a common order for the sake of convenience.

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3. The application is barred by limitation by 102 days. An application for condonation of delay has also been filed by assessee before us on 04.07.2023. The case of the assessee is this that the order impugned was served upon the assessee on 16.01.2023 and the appeal was, therefore, due to be filed by 17.03.2023. The order was served upon one of the staff members namely Suresh Kumar Reddy G, who left the organisation and after that the order got misplaced and therefore not brought to the notice of the management for filing appeal is the explanation given by the appellant before

us. Furthermore, the Managing Director was also out of station during the particular period of time. Hence the appeal could be filed on 17.03.2023 thereby causing 102 days delay.

4. It appears that sufficient cause has been explained by the assessee in preferring the appeal beyond date as mentioned above. The same seems to be genuine. Delay, therefore, is condoned.
5. The assessee has preferred the appeal with the following grounds.

S.No	Particulars	Tax effect
1.	The order of the Ld. CIT(A) is erroneous both on facts and in law.	General Ground
2.	a. The Ld.CIT(A) ought to have appreciated the fact that the CPC, Bangalore has wrongfully made an addition of Rs.29,28,891/- towards Provident fund payment and ESI fund payment without considering the facts of the case.	Rs.10,13,630 /-
	b. The Ld.CIT (A) erred in not appreciating the fact that all the payments in relation to the Provident fund and ESI were made in the time limits prescribed in the Act.	As Stated above
	c. The Ld.CIT(A) ought to have appreciated the fact that the CPC, Bangalore erred in making the additions not considering section 36(1)(va) r.w.s 43B of the Act, that expenditure is allowable if paid within due date of filing return of income.	As Stated above
	d. The Ld.CIT(A) ought to have considered the fact that all the payments of provident fund and ESI fund of employees and employer share are paid on or before due date of filing return of income.	As Stated above
3.	The Ld. CIT(A) erred in dismissing ground nos. 6 to 9 taken before him in respect of the disallowance of Rs.5,00,150/-	Rs. 173091/-
	The Ld.CIT(A) erred in holding at para 8(d) of his order that the computation of income for A.Y 2018-19 has not been filed nor any other documentary evidence has been filed to prove that the amount of Rs.5,00,150/- was added back to total income in the return filed for A.Y 2018-19.	Stated as above
	The Ld.CIT(A) erred in not appreciating the assessee's written submissions filed before him where in the details of the disallowance of the amount of Rs.5,00,150/- that has been included in the total disallowance made u/s 43B have been furnished vide para nos. 4 to 4.4 of the submissions.	Stated as above

	The Ld. CIT(A) ought to have appreciated that the disallowance of Rs.5,00,150/- has been included in the amount Rs.13,91,014/- shown in against column no. 11(b) of the ITR filed for the A.Y 2018-19.	Stated as above
	The Ld.CIT(A) ought to have appreciated that the amount of Rs.5,00,150/- has also been included in the disallowance of Rs.21,13,724/- shown in the computation of total income filed for the A.Y 2018-19.	Stated as above
4.	a. The Ld.CIT(A) ought to have appreciated the fact that the CPC Bangalore has erred in making addition of Rs. 50,045/- towards the amount disallowable u/s 40(a)(ia) on account of non-compliance with the provisions of chapter XVII-B with out appreciating the facts of the case.	Rs. 17319/-
	b. The Ld.CIT(A) ought to have appreciated the fact that the CPC, Bangalore erred in not considering the fact the assessee has not been treated as assessee in default u/s 201(1) of the IT Act.	As stated above
5.	The appellant may, add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.	General ground

6. Ground no. 1 is general in nature and thus no order needs to be passed.
7. Ground no. 2 – The Ld.AR does not want to proceed with ground no. 2 and therefore the same is dismissed as not pressed.
8. Ground no. 3 – Disallowance of Rs.5,00,150/- in respect of contribution to provident fund, superannuation fund / gratuity fund or any other fund for the welfare of the employees relating to the earlier year is the subject matter of the ground. The CPC made disallowance u/s. 43B amounting to Rs.5,00,150/- towards sum payable by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the

employees in the year under consideration. It is the case of the assessee that the amount has been debited to the profit & loss account of the previous year. The sum payable to an employee by way of contribution towards fund has been shown in the tax audit as not allowable expenses u/s. 43B. The assessee made payment of Rs.5,00,150/- towards sum payable to employees' credit for A.Y. 2018-19 on 16.02.2018 as contribution to provident fund and superannuation fund made in the year 2017-18. The amount, therefore, was not available for deduction in 2017-18 as the same amount was not paid by the assessee on or before the due date applicable in it's case of furnishing his IT return u/s. 139(1) of the Act. However, in terms of the provision of the law, the same expenditure can be availed as deduction in the year of actual payment i.e. for A.Y. 2018-19. The claim of making such payment in the previous year not appearing in the audit report due to some technical error. In that view of the matter, the assessee prayed for deletion of the adjustment made in the intimation u/s. 143(1) of disallowance of payment towards contribution of provident fund and superannuation of Rs.5,00,150/- for the year under consideration.

9. No evidence has been filed by the appellant to the amount of Rs.5,00,150/- was added back to the income of the appellant for A.Y. 2017-18, particularly the computation of income for A.Y. 2017-18 and the contention made by the appellant was

not found to be acceptable as also the same fact is not appearing in the Audit Report as a technical error, the addition of Rs.5,00,150/- was upheld by the Ld.CIT(A). At the time of hearing the instant appeals, the Ld.Counsel appearing for the assessee submitted before us that the issue may be remitted to the file of Ld.AO for verification of the same upon considering the evidences to be placed by the assessee in support of the case made out. The Ld.DR on the other hand relied upon the order passed by the Ld.CIT(A).

10. Having heard the Ld.Counsel appearing for the parties and having regard to the facts and circumstances of the case, we in order to prevent the miscarriage of justice, find it fit and proper to remit the issue to the file of Ld.AO to adjudicate the issue afresh upon considering the evidence on record and any other evidence which the assessee may choose to file at the time of hearing of the matter. We also further make it clear that the assessee in that event be given an opportunity of being heard by the Ld.AO. This ground of appeal is, therefore, allowed for statistical purposes.
11. Ground no. 4 – Addition of Rs.50,045/- u/s. 40(a)(ia) on account of non compliance with the provisions of chapter XVII-B is the subject matter before us.
12. The assessee's case is this that the receiver of the above expenditure has offered as income in its return of income for the respective financial year and thus no disallowance can be

made u/s. 40(a)(ia) of the Act in the hands of the assessee. Further that the Ld.AO has not treated the assessee as 'assessee in default' u/s. 201(1) and neither any proceeding was initiated by the Ld.AO and therefore the disallowance made u/s. 40(a)(ia) of the Act is not in terms of the statutory provision and thus liable to be deleted. The case of the revenue is this that no details have been furnished about the receiver neither evidence has been filed to show that the receiver of the said expenditure has offered this amount as income in its ITR filed for A.Y. 2018-19 u/s. 139 of the Act. The assessee, therefore, not fulfilled the conditions stipulated in the first proviso to section 201(1) of the Act and failed the mandatory requirement to deduct TDS on this payment. The Ld.CIT(A) therefore, upheld the disallowance made by the Ld.AO.

13. At the time of hearing the instant appeals, the Ld.Counsel appearing for the assessee submitted before us that the issue may be remitted to the file of Ld.AO for verification of the same upon considering the evidences to be placed by the assessee in support of the case made out. The Ld.DR on the other hand relied upon the order passed by the Ld.CIT(A).
14. Having heard the Ld.Counsel appearing for the parties and having regard to the facts and circumstances of the case, we in order to prevent the miscarriage of justice, find it fit and proper to remit the issue to the file of Ld.AO to adjudicate the issue afresh upon considering the evidence on record and

any other evidence which the assessee may choose to file at the time of hearing of the matter. We also further make it clear that the assessee in that event be given an opportunity of being heard by the Ld.AO. This ground of appeal is, therefore, allowed for statistical purposes.

15. Ground no. 5 is general in nature and therefore do not require any adjudication.

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16. The application is barred by limitation by 19 days. An application for condonation of delay has also been filed by assessee before us. The case of the assessee is this that the order impugned was served upon the assessee on 18.03.2023 and the appeal was, therefore, due to be filed by 19.03.2023. As the order was served upon one of the staff member namely Suresh Kumar Reddy G, who left the organisation and after that the order got misplaced and thus not brought to the notice of the management for filing appeal, and furthermore the Managing Director was also out of station during the particular period of time, the appeal could be filed on 06.04.2023 causing 19 days delay.
17. From the above, it appears, that sufficient cause has been explained by the assessee in preferring the appeal beyond date. The same seems to be genuine and thus, delay is condoned.

18. The addition of Rs.15,34,844/- u/s. 194H is the subject matter before us.
19. The brief facts leading to this issue this that the assessee filed its return of income for A.Y. 2018-19 on 28.11.2018 declaring total income at Rs.3,67,36,490/-. The case was selected for limited scrutiny under CASS to verify the issue “verification of the genuineness of the expenses”. Notices u/s. 143(2) were issued under ITBA. The assessee was further served with the notice u/s. 142(1) of the Act and the assessment ultimately was finalized upon making addition of Rs.15,34,844/- u/s. 194H of the Act.
20. It appears that M/s. Avenue India Pvt. Ltd. and M/s. Razor Pay are gateway providers who collect fees from participants on the part of the appellant and charging commission. After returning the commission, they transfer the balance amount to the appellant. TDS is deducted u/s. 194H on commission part and not on the whole receipt and the amount of Rs.1,32,629/- was deducted as credit of TDS. The company paid Rs.16,76,041/- and Rs.9,76,530/- towards gateway payment charges (commission) to M/s. Razor Pay and M/s. Avenue India Pvt. Ltd. respectively. As per tax audit report, the appellant has shown commission paid of Rs.26,52,620/- on which TDS u/s. 194H of Rs.1,32,631/- was deducted at 5%. According to the revenue, the assessee made payment to M/s. Avenue India Pvt. Ltd. of Rs.25,11,375/- and not Rs.9,76,531/-. The appellant further stated that payment of

TDS of Rs.48,827/- is deducted u/s. 194H on commission payment of Rs.9,76,531/-. On the ledger account, these two parties commission payment shown is Rs.16,76,041/- and Rs.9,76,530/- only on which TDS u/s. 194H at 5% to the tune of Rs.1,32,629/- was deducted. According to the revenue, the appellant has paid commission of Rs.15,34,844/- (Rs.25,11,375 – Rs.9,76,531) as reflecting in the books of accounts and thus addition on the same amount was made by the Ld.AO u/s. 194H of the Act which was further upheld by the Ld.CIT(A).

21. At the time of hearing the instant appeal, the Ld.Counsel appearing for the assessee submitted before us that the case was selected for limited scrutiny under CASS to verify the issue “verification of the genuineness of the expenses” and therefore the scope of making addition in the instant case is beyond the scope of limited scrutiny and thus the addition is not in accordance with law and thus liable to be deleted. The submission of the Ld.AR have not been able to be controverted by the Ld.DR rather consideration of the issue of payment of TDS is also within the scope of limited scrutiny for verification of the genuineness of the expenses as was the ultimate argument by him. However, according to us such submissions is found to be not tenable, the scope of limited scrutiny is only within the periphery of the verification of the genuineness of the expenses which does not include the payment of TDS as has been considered in this particular

case by the Ld.AO and addition made thereof. Hence the same is not found to be justified and thus deleted.

22. On merit we have heard the Ld.Counsel appearing for the assessee. According to him, TDS is also not liable deducted on whole receipts. On this aspect, he has relied upon certain judgments. TDS u/s. 194H has to be made on the commission part and not on the whole receipts as the crux of his arguments. The addition therefore, has been made only on estimation basis and thus liable to be deleted.
23. Moreso, the appellant paid Rs. 16,76,041/- and Rs.9,76,530/- towards the gateway payment charges to the said M/s. Razor Pay and M/s. Avenue India Pvt. Ltd. and also filed reconciliation statement of commission expenses with books of accounts and the TDS returns filed by the appellant.
24. On this aspect he has relied upon the following decisions:
- CIT vs Corporation Bank, High Court of Karnataka, (2021) 123 Taxmann.com 204
 - PCIT vs Make My Trip (P.) Ltd., High Court of Delhi, (2019) 104 taxmann.com 263
 - Inter globe Aviation Ltd vs ACIT, ITAT Delhi, (2020) 114 taxmann.com 460
 - ACIT vs Head Infratech India Pvt Ltd, ITAT Hyderabad, ITA No: 2372/Hyd/2018
25. The copy of the above decisions has also been submitted before us. We find that it has been held by the Hon'ble

Jurisdictional High Court that the service charges paid by the bank to National Financial Switch and Cash Tree for routing transactions of payments made by customers to the assessee bank to acquiring bank would not be liable to TDS deduction u/s. 194H of the Act. While doing so, the Hon'ble High Court has pleased to observe as follows:

“7. Now we may advert to the facts of the case in hand. In case the credit card issued by the assessee was used on the swiping machine of another bank, the customer whose credit card was used got access to internet gateway of acquiring bank resulting in realization of the payment. Subsequently, the acquiring bank realize and recover the payment from the bank, which had issued the credit card. The relationship between the assessee and any other bank is not of an agency but that of two independent basis on principal- principal basis. Even assuming that the transaction was being routed to National Financial Switch and Cash Tree, then also it is pertinent to mention here that the same is a consortium of banks and no commission or brokerage is paid to it. It does not act as an agent for collecting charges. Therefore, we concur with the view taken by the High court of Delhi in JDS APPARELS supra and hold that provisions of Section 194H of the Act are not attracted to the fact situation of the case. In the result, the third substantial question of law is also answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.”

26. Further the Hon'ble Delhi High Court in case of PCIT vs. Make My Trip India (P.) Ltd. (supra) has observed as follows:

“16. The amount retained by the bank is a fee charged by them for having rendered the banking services and cannot be treated as a commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods. The intention of the legislature is to include and treat commission or brokerage paid when a third person interacts between the seller and the buyer as an agent and thereby renders services in the

course of buying and/or selling of goods. This happens when there is a middleman or an agent who interacts on behalf of one of the parties, helps the buyer/seller to meet, or participates in the negotiations or transactions resulting in the contract for buying and selling of goods. Thus, the requirement of an agent and principal relationship. This is the exact purport and the rationale behind the provision. The bank in question is not concerned with buying or selling of goods or even with the reason and cause as to why the card was swiped. It is not bothered or concerned with the quality, price, nature, quantum etc. of the goods bought/sold. The bank merely provides banking services in the form of payment and subsequently collects the payment. The amount punched in the swiping machine is credited to the account of the retailer by the acquiring bank, i.e. HDFC in this case, after retaining a small portion of the same as their charges. The banking services cannot be covered and treated as services rendered by an agent for the principal during the course of buying or selling of goods as the banker does not render any service in the nature of agency.”

27. From the case in hand, we find that the parties are service providers who collect fees from participants and they collect gateway payment commission from the appellant after returning the gateway charges they transfer the balance amount collected from the participants to the appellant.
28. We find that the payments made to gateway providers are not brokerage and TDS u/s. 194H of the Act is not liable to be deducted.
29. Thus taking into consideration the entire aspect of the matter and respectfully relying on the judgment passed by the different forums, we find that in the present facts and

circumstances of the matter, TDS is not liable to be made u/s. 194H. The addition, is, therefore, deleted.

In the result, the appeal filed by the assessee stands allowed.

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

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(MADHUMITA ROY)
Judicial Member

Bangalore,
Dated, the 21st September, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore