

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "F" Bench, Mumbai.

Before Justice C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 2545/Mum/2023 (A.Y. 2019-20)

Vijaykumar Vaidheeswaran Iyer 73, Jupiter Apartments, 41 Cuffe Parede Mumbai-400 005. PAN : AAAP12589N (Appellant)	Vs.	ADIT Central Processing Centre, Income Tax Department Bengaluru-560500. (Respondent)
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Assessee by	Shri Kentan Ved
Department by	Smt. Vranda U. Matkari
Date of Hearing	30.10.2023
Date of Pronouncement	30.10.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 22.05.2023 passed by ld. CIT(A), NFAC, Delhi and it relates to the Asst. Year 2019-20.

2. The assessee is aggrieved by the decision of ld. CIT(A) in not entertaining the claim for deduction under Section 40(a)(ia) of the Act on the basis of remittance of TDS in Asst. Year 2019-20.

3. The ld. AR submitted that the present appeal has been filed against the order passed by ld. CIT(A) in respect of rectification order passed by the Assessing Officer under Section 154 of the Act. With regard to the claim mentioned in the preceding paragraph, the ld. AR explained that the assessee did not deduct TDS from professional fees paid by it in AY 2018-19 and hence the said claim of professional fees was disallowed in Asst. Year 2018-

19 under Section 40(a)(ia) of the Act. The assessee had challenged the said disallowance by filing appeal in Asst. Year 2018-19 and it is pending.

4. In the meantime, the assessee remitted the TDS deducted from the above said professional fees during the year under consideration. As per the provisions of sec. 40(a)(ia) of the Act, the assessee is entitled for deduction of the said expenditure in the year of remittance of TDS. Hence the assessee would be eligible for deduction of the amount so disallowed in AY 2018-19 in the current year, if the said disallowance is confirmed by the appellate authorities. Accordingly, the assessee filed a rectification petition in AY 2019-20 seeking deduction of amount disallowed in Asst. Year 2018-19. The said claim was rejected by CPC and in the appeal filed by the assessee, the ld. CIT(A) also rejected it.

5. The ld. AR further submitted that the assessee had also filed an appeal before Ld CIT(A) against the intimation issued under Section 143(1) of the Act for AY 2019-20 on certain other issues. In the said appeal, the assessee raised an additional ground claiming deduction of amount that was disallowed in AY 2018-19 under Section 40(a)(ia) of the Act on the ground that the TDS has been remitted in the year relevant to AY 2019-20. The said appeal was dismissed by Ld CIT(A) and hence the assessee filed appeal before the ITAT and Tribunal has since disposed of the said appeal by remitting the issue to the file of the Assessing Officer with the following observations:- (Order dated 22-08-2023 passed in ITA No.1661/Mum/2023)

“9 We have heard the rival submissions and perused the materials available on record. It is observed that the Assessing Officer for AY 2018-19 vide order dated 12-02-2022 passed under Section 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 under Section 40(a)(ia) of the Act. The assessee was in appeal before the Ld CIT(A), challenging the impugned disallowance made under Section 40(a)(ia) of the Act pertaining to AY 2018-19. The assessee during the year under consideration, i.e. AY 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 AY 2018-19 had sought for the said deduction during the impugned year, along with the other regular grounds of appeal. The Ld CIT(A) 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 Ld AO during issuance of notice under Section 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 Ld Assessing Officer to verify the fact that the assessee has paid the TDS amount for the professional fees paid by the assessee. The Ld 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 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 Ld A.O.”

6. The Ld A.R submitted that the present appeal has been filed challenging the order passed by Ld CIT(A) rejecting the claim made in the rectification order passed under Section 154 of the Act. The Ld A.R submitted that the co-ordinate bench has already restored this matter to the file of Assessing Officer, vide its order dated 22-08-2023 passed in the appeal against intimation issued under Section 143(1)(a) of the Act. Since the prayer made in the present appeal is same as prayed in the above said appeal, the Ld A.R submitted that this appeal may be disposed of by remitting the matter to the file of the Assessing Officer.

7. We heard Ld D.R and perused the record. We notice that the assessee has filed multiple appeals on the very same issue in different proceedings. The claim for deduction of the professional fees to the extent that was disallowed in AY 2018-19 will be allowable in the year under consideration, provided the said disallowance made in AY 2018-19 is confirmed in the appellate forum and the fact of remittance of TDS during the year under consideration is verified. Hence the claim made in this year is dependent upon the outcome of the appeal filed in AY 2018-19 and accordingly, the co-ordinate bench has restored the matter to the file of

Assessing Officer, as per the order extracted above. Accordingly, the issue urged in this appeal does not require any specific adjudication at our end and accordingly, it is restored to the file of Assessing Officer.

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in on 30.10.2023.

Sd/-
(Justice C.V. Bhadang)
President

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 30/10/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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