

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.940/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. S. Ramasubramaniam & Associates 6/1, Bishop Wallers Avenue (West), Mylapore, Chennai-600 004.	बनम/ Vs.	DCIT Non-Corporate Circle-7(1) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAAFS-2352-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri N.V. Balaji (Advocate)-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT)- Ld. Sr. DR

सुनवाईकी तारीख/ Date of final Hearing	:	07-03-2024
घोषणाकी तारीख / Date of Pronouncement	:	13-03-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 06-07-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 22-03-2016. The grounds raised by the assessee read as under:

- 1.The order of the CIT(A) is contrary to law and facts of the case and is violative of the principles of natural justice.
- 2.The learned CIT(A) erred in not providing any personal hearing despite making a request for the same.

3. The learned CIT(A) erred in upholding the disallowance of TDS credit by applying Rule 37BA of the Income Tax Rules, 1962 when the said rule is inapplicable in the appellant's case.

4. The learned CIT(A) failed to appreciate that TDS was deducted even on advances received by the appellant which was appropriated towards incurring expenses and further erred in upholding the disallowance of TDS credit on such advances.

5. The learned CIT(A) failed to appreciate that the appellant would never disclose the reimbursement of expenses in the profit and loss account and further erred in denying TDS credit for non-disclosure of such receipts in the profit and loss account

6. The learned CIT(A) erred in holding that the appellant has not recorded reimbursement of expenses in the books of account maintained by it when the appellant has recorded the reimbursement of expenses receivable in separate ledger in its books of account.

7. The learned CIT(A) failed to appreciate that section 199 of the Income Tax Act, 1961 ["Act"] does not mandate the offering of gross receipts as income to claim the TDS deducted thereon post its substitution by Finance Act, 2008.

8. The CIT(A) failed to appreciate that the provisions of Chapter XVII does not apply to reimbursement of expenses and further failed to appreciate that TDS was wrongly deducted on reimbursement of expenses and further erred in denying TDS credit relating to such reimbursements on the ground that the same is not disclosed as gross receipts in the profit and loss account.

9. The learned CIT(A) erred in confirming the disallowance of TDS credit by holding that the appellant has not produced any evidence that the receipts on which TDS was deducted are in the nature of reimbursement of expenses.

10. The learned CIT(A) failed to appreciate that the action of the assessing officer results in denial of TDS credit for ever.

As is evident, the sole issue that fall for our consideration is denial of TDS credit by Ld. AO to the assessee.

2. The Ld. AR advanced arguments and pleaded for grant of full TDS credit as reflected in Form 26AS. The Ld. AR submitted that the assessee is a legal firm and it receives professional fees which would include reimbursement of expenses also. The Ld. AR submitted that in few cases Tax has been deducted at source on reimbursements also which would never be credited in Profit & Loss account. The Ld. Sr. DR, on the other hand, submitted that TDS credit has been granted as per Rule 37BA. Having heard rival submissions, the appeal is disposed-off as under.

3. From the case records, it emerges that assessee being a partnership firm is engaged in legal profession. During assessment proceedings, it transpired that total credit to Profit & Loss account, as per Form 26AS, should have been Rs.815.22 Lacs. As against this, the assessee credited only Rs.625.04 Lacs. It was noted by Ld. AO that though TDS was deducted on balance sum, the corresponding receipts was not recognized by the assessee as revenue and the same was shown as 'advances received from clients'. The value of such advances as on 31-03-2014 was Rs.1046.60 Lacs. Accordingly, applying the provisions of Rule 37BA(3)(i) r.w.s. 199, Ld. AO held that credit would be given in the year in which the income would be assessable. Finally, TDS credit was denied to the extent of Rs.19.20 Lacs. The Ld. AO also held that the credit of the same would be granted in the year in which such income was assessable.

4. During appellate proceedings, the assessee submitted that it was following cash system of accounting. The assessee was maintaining separate bank accounts in respect of income it would earn from clients and money received towards expenses in handling litigation for its clients. The clients advanced money for expenses and same was used for litigation expenditure including payment of court fee etc. In many cases, the clients deducted TDS even in respect of such reimbursements advanced by them. The amount of Rs.625.04 Lacs represents fees received from clients. The firm's accounting policy was that the firm adjusts said advance received towards professional fee and for expenditure incurred on actual basis by raising invoices subsequently. The reimbursements would never form part of income of the assessee. It was also submitted that reimbursement of court fees

and other expenses would not involve any profit element. Such reimbursements on cost-to-cost basis would never form part of the income of assessee and the same would never be credited to Profit & Loss account. In support, the assessee relied on various judicial decisions. However, Ld. CIT(A), considering the provisions of Section 199 and Rule 37BA(3)(i), upheld the action of Ld. AO that TDS credit would be given in the year in which such income would be assessable. The Ld. CIT(A), in para 11.1, also rendered a finding that the assessee did not produce evidences in support of the claim that receipts were in the nature of reimbursements and expenses of same amount were indeed incurred by the assessee. The aforesaid submission could not be substantiated by the assessee. Therefore, the stand of Ld. AO was upheld against which assessee is further appeal before us.

5. Having considered rival submissions and upon perusal of case records, it emerges that the assessee is engaged in legal profession and recognize revenue on cash system of account. Under such system, the professional fees received, even as advance, would constitute income of the assessee in the year of receipt. It also transpires that the assessee would raise consolidated bill for fees as well as towards reimbursement of expenses like court fees, stamp duty and other charges. Undisputedly, expenses which are mere reimbursements in nature would get nullified and the same would never be credited to Profit & Loss account. The fees received by the assessee from clients only would constitute income of the assessee. We concur with the submissions of the assessee to that extent. However, it is the finding of Ld. CIT(A) that the assessee could not substantiate this fact. Even before us, the Ld. AR has failed to reconcile difference in Form 26AS credits vis-à-vis income credited by

the assessee in Profit & Loss Account. Under these circumstances, in principle, we would hold that TDS credit on advances towards reimbursement of expenses would be available to the assessee in this year but TDS credit would not be available on fees which have not been offered to tax in this year and which have merely been shown as advances at year-end. With a view to enable the assessee to reconcile the difference, we deem it fit to restore the matter back to the file of Ld AO. The assessee is directed to provide the requisite break-up. The TDS credit would be granted to the assessee in terms of our aforesaid observation. No other ground has been urged before us.

6. The appeal stands partly allowed for statistical purposes.

Order pronounced on 13th March, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 13-03-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF