

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

I.T.A. No. 291/Mum/2024
(Assessment Year: 2010-11)

I.T.A. No. 289/Mum/2024
(Assessment Year: 2011-12)

I.T.A. No. 292/Mum/2024
(Assessment Year: 2014-15)

Deloitte Haskins and Sells LLP, 32 nd Floor One International Center, Tower-3, Senapati Bapat Marg, Elphinstone Mill Compound, Maharashtra-400013. PAN : AACFD4815A	Vs.	ACIT-11(2), Circle-16(2), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Assessee)	:	Respondent)

Assessee / Assessee by : Shri Niraj Sheth, AR

Revenue / Respondent by : Shri Krishna Kumar, Sr. DR

Date of Hearing : 18.12.2024

Date of Pronouncement : 04.02.2025

ORDER

Per Padmavathy S, AM:

These appeals by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC) Delhi [in short "the CIT(A)"] all dated 24.11.2023 for Assessment Year

(AY) 2010-11, 2011-12 & 2014-15. The issues contended in this appeals are common and therefore these appeals were heard together and disposed of by this common order.

2. To understand the facts and issues involved, we are considering the appeal filed for AY 2010-11 (ITA No. 291/Mum/2024) as lead appeal in which the assessee raised the following grounds:-

“1. Re.: Addition of Rs.93,06,204/- as professional fees made on the basis of the un- reconciled transactions appearing in Form 26AS and the books of accounts:

1.1 The NFAC/ CIT(A) has erred in confirming the addition of Rs.93,06,204/- as professional fees being the alleged difference between the professional fees appearing in Form 26AS and the books of accounts.

1.2 The Assessee submits that considering the facts and circumstances of its case and the law prevailing on the subject the said un-reconciled entries cannot be treated as income and the NFAC/CIT(A) ought to have held as such.

1.3 The Assessee submits that the NFAC/CIT(A) has confirmed the addition made by the Assessing Officer ignoring the facts of the case, the details/ particulars and additional evidence filed and without even analysing the law on the subject.

1.4 The Assessee submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income and tax thereon accordingly.

1.5 NFAC/CIT(A) failed to appreciate that Assessee is following cash system of accounting and hence amount appearing in Form 26AS is not necessarily the Assessee's income for the relevant assessment year.

Re.: Disallowance u/s. 40(a)(i) of the Income-tax Act, 1961 aggregating to Rs.81,69,987/-:

2.1 The National Faceless Appeal Centre ["NFAC"] / Commissioner of Income-tax (Appeals) ["CIT(A)"] has erred in confirming the disallowance

made u/s. 40(a)(i) of the Income-tax Act, 1961 ["the Act"] on the following payments:

Sr. No.	Name of the party	Amount (in Rs.)
	1. Professional fees:	
1.	Deloitte & Touche LLP, USA	57,79,027
2.	Deloitte Tax LLP, USA	4,37,903
3.	Deloitte & Touche Management Services Pte. Ltd., Singapore	7,90,968
4.	II. Purchase of publication	5,43,851
5.	III. Reimbursement of expenses	4,76,809
6.	IV. Registration charges	1,41,429
	TOTAL	81,69,987

2.2 The Assessee submits that considering the facts and circumstances of its case and the law prevailing on the subject, no disallowance u/s. 40(a)(i) of the Act is called for and the NFAC/CIT(A) ought to have held as such.

2.3 The Assessee submits that the NFAC/CIT(A) has confirmed the disallowance made by the Assessing Officer ignoring the facts of the case, the details/ particulars filed and without even analysing the law on the subject.

2.4 The Assessee submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income and tax thereon accordingly.

3. Re.: Payments made to retired partners amounting to Rs.4,41,38,383/-

3.1 The NFAC/ CIT(A) has erred in confirming the action of the Assessing Officer of considering the amount of Rs.4,41,38,383/- paid to retired partners as income of the Assessee.

3.2 The Assessee submits that considering the facts and circumstances of its case and the law prevailing on the subject, the said amount of Rs.4,41,38,383/- cannot be considered as its income as it was diverted by overriding title and the Assessing Officer/NFAC/ CIT(A) ought to have held as such.

3.3 The Assessee submits that the NFAC/CIT(A) has confirmed the addition made by the Assessing Officer ignoring the facts of the case, the

details/ particulars filed and without even analysing the law on the subject.

3.4 The Assessee submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income and tax thereon accordingly.

3.5 The NFAC/CIT(A) erred in not following earlier years and subsequently favourable Commissioner (Appeals) order for the AY 2008-09 and AY 2012-13 while deciding this issue.

Without prejudice to the foregoing:

3.6 The Assessee submits that the payments made to retired partners of Rs.4,41,38,383/- ought to be allowed as a deduction u/s 37(1) of the Act while computing its total income.

4. Re.: Advance received from clients Rs.34,94,907/-

4.1 The NFAC/ CIT(A) has erred in confirming the action of the Assessing Officer in considering the advances of Rs.34,94,907 received from the client as income of the assessee.

4.2 The NFAC/ CTT(A) ought to have appreciated that the advances received from client cannot be considered as income unless it becomes due as fees of the assessee

4.3 The NFAC/CIT(A) erred in holding that assessee is maintaining hybrid system of accounting. The assessee submits that it is following cash system of accounting only.

4.4 The Assessee submits that the Assessing Officer be directed to delete the addition so made by him.

4.5 The NFAC/CIT(A) erred in not following earlier years favourable Commissioner (Appeals) order for the AY 2004-05 to AY 2008-09 while deciding this issue.

Sufficient opportunity:

4.6 The NFAC/CIT(A) erred in passing order without giving sufficient opportunity to assessee.

Without prejudice to the foregoing:

4.7 The assessee submits that the NFAC/CIT(A) erred in not allowing deduction in the AY 2010-11 for the advances aggregating to Rs. 14,71,178 received in the AY 2009-10 which were transferred to the professional fees account in the AY 2010-11.

5. Re.: Credit for tax deducted at source amounting to Rs.2,64,99,224/- granted short:

5.1 The NFAC/CIT(A) erred in not directing the Assessing Officer to grant full credit for tax deducted at source of Rs. 19,83,54,610 as claimed by the Assessee for the year under consideration.

5.2 The Assessee submits that considering the facts and circumstances of its case and the law prevailing on the subject, it is entitled to full credit for tax deducted at source from its income as claimed by it and NFAC/CIT(A) ought to have held as such.

5.3 The Assessee submits that the Assessing Officer be directed to grant full credit for tax deducted at source as claimed by it and to re-compute its tax liability accordingly.

6. Re.: Interest u/s 234D

6.1 The NFAC/CIT(A) ought to have directed to delete the interest of Rs.6,43,735 levied under section 234D after allowing further TDS credit of Rs.2,64,99,24. The assessee denies liability for interest charged under section 234D.

7. Re.: Interest u/s 244A:

7.1 The NFAC/CIT(A) ought to have provided interest under section 244A after allowing further TDS credit of Rs 2,64,99.24 and relief of disallowance as stated above.

8. Re.: General:

The Assessee craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever modify all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

3. The assessee is a Firm and filed the return of income for AY 2010-11 on 12.10.2010 declaring a total income of Rs. 11,86,18,520/-. The assessee filed a revised return on 29.03.2012 revising the TDS claimed in the original return of income. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) called on the assessee to furnish various details from time to time and concluded the assessment by making following additions:

(i)	Undisclosed Professional fee	– Rs. 93,06,204/-
(ii)	Payment made outside India without TDS	– Rs. 81,69,987/-
(iii)	Payment to retire partners	– Rs.4,41,38,383/-
(v)	Advance received from clients	– Rs. 34,94,907/-.

4. On further appeal the CIT(A) confirmed the additions made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

Undisclosed Professional fee – Ground No.1

5. During the course of assessment proceedings the AO required the assessee to reconcile the TDS and Professional Fees as appearing in Form 26AS with the books of accounts. The assessee submitted a reconciliation mentioning that because of the voluminous data amount to the extent of Rs. 93,06,204/- could not be reconciled. The assessee further submitted the various reasons that would have resulted in the difference such as method of accounting, reporting error by the third party, etc. The assessee also submitted that a notice under section 133(6) could be issued to the concerned parties with records supporting the payment of fees to assessee as appearing in Form 26AS. The AO however did not consider the submissions and made an addition of Rs. 93,06,204/- as undisclosed revenue being difference between the Professional Fees as per Form 26AS and books of accounts.

6. Aggrieved by the order of the AO, the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee submitted additional evidences reconciling the difference between Form 26AS and books of accounts and the CIT(A) called for a remand report from the AO in this regard. In the remand proceeding, the assessee provided reconciliation to the tune of Rs. 73,20,340/-. The assessee further submitted with regard to fee of the clients that the amount reflected in Form 26AS has not actually been received by the assessee. The assessee also submitted for the balance un-reconciled amount, details of invoices, the date of receipt of payments against the invoices, etc. The assessee once again requested for issuing summons to the party requiring them to produce evidences in support of the amount reflected as paid to the assessee in Form 26AS. The CIT(A) did not consider any of the submissions of the assessee and proceeded to confirm the disallowance made by the AO.

7. The ld. AR submitted that the assessee has reconciled substantial portion of the Professional Fees between Form 26AS and books of accounts and the CIT(A) has completely ignored the reconciliation to confirm the disallowance made by the AO. The ld. AR drew our attention to the reconciliation submitted during the remand proceedings and details pertaining to the un-reconciled balances to submit that in most of the un-reconciled cases, the amount declared by the assessee as received from the parties is more than amount in Form 26AS in most of the cases. The ld. AR further submitted that the AO/CIT(A) have not considered the submission of the assessee that notice under section 133(6) could be issued to these parties calling for details substantiating the amount reflected by them in Form 26AS. The ld. DR placed reliance on the decision of the Co-ordinate Benches in the following cases to submit that the addition cannot be made merely

based on what is reflected in Form 26As without bringing any evidence on record to substantiate that the assessee has actually received the impugned payments.

- (i) Shree Ballabh R. Lohiya vs. ITO (ITA No. 4120/Mum/2011 dated 08.08.2012).
- (ii) M/s Pfizer Ltd. vs. ACIT (ITA No. 4826/Mum/2016 dated 30.08.2019).
- (iii) Greatship (India) Ltd. vs. DCIT (ITA No. 1457/Mum/2016 dated 31.08.2021).

8. The ld. AR also submitted that the Co-ordinate Bench in assessee's own case vide consolidated order dated 23.03.2018 for AYs 2006-07 to 2008-09 has also considered a similar issue and held that no addition could be made.

9. The ld. DR on the other hand vehemently argued that the assessee has not provided the proper reconciliation and the ledger copies. Accordingly, the ld. DR supported the order of the lower authorities.

10. We heard the parties and perused the material on record. Before the AO, the assessee submitted reconciliation between the professional fees received as per books of accounts and what is reflected in Form 26AS in which the assessee could not reconcile the difference to the tune of Rs. 93,06,204/-. During the appellate proceedings, the assessee submitted further reconciling an amount of Rs. 73,20,340/-. The assessee submitted before the CIT(A) the details of invoices, date of receipt of payment, etc. for the un-reconciled balance and also submitted with regard to few parties that the payment as reflected in Form 26AS has not actually been received by the assessee. We notice that the CIT(A) inspite of calling for the remand report has not considered the further details furnished by the assessee reconciling the balances and has simply proceeded to confirm the addition made by the AO. It is a well-settled position that the AO cannot make any addition

merely based on the mismatch in Form 26AS without examining the additional evidences, reasons for the differences, etc. filed by the assessee. The assessee has provided the party wise details of professional fees along with the date of receipt to substantiate the amount reflected in the books of accounts. In this regard, it is relevant to take note that the following observations of the Co-ordinate Bench in assessee's own case (supra)

“10.3. We have heard the rival submissions. We find that major amount under the head professional fee received is from Encorn Win Farms (India) Ltd., that the payer had, in response to section 13(6) notice, admitted (Pg-53 of the PB) that it had not paid any amount to the assessee, that it also ascertained that no professional services were availed from the assessee. We find that the FAA had brushed aside such an important piece of evidence only on the ground that the figure was appearing in the AIR. Mistakes in the information in AIR is not uncommon. In these circumstances and after considering the Pg-53 of the PB, we are of the opinion that we are of the opinion the FAA was not the justified in confirming the addition of Rs.51.06 lakhs. We would also like to refer to the case of Sri Vallabh Lohia (supra) wherein the issue of non reconciliation of AIR information has been deliberated upon. We are reproducing the relevant portion of the order and it reads as under:

“5. In Ground Nos.3 & 4 of appeal, assessee has disputed the order of ld CIT(A) in confirming the addition of Rs.2,66,916 made by the AO as interest received from Rajvaibhav Enterprises Pvt Ltd., based on AIR information.

6. The AO stated that as per AIR information, assessee received interest from Rajvaibhav Enterprises Pvt Ltd., amounting to Rs.2,66,916. Further, assessee vide letter dated 18.12.2009 stated that no interest payment was received nor the assessee claimed any TDS in respect of the alleged interest. However, AO did not concur with the contention of the assessee and made this addition to the income of the assessee. In the first appeal, ld CIT(A) confirmed the action of AO. Hence, this appeal by the assessee.

7. During the course of hearing, ld A.R. reiterated the facts as stated before the authorities below. He referred to pages 41 -43 of PB, which is a copy of ledger account of M/s. Steel World and submitted that assessee has not received any interest from Rajvaibhav Enterprises (P) Ltd.,. He submitted that merely on the basis of AIR information and without any evidence that

assessee has received any interest from it, hence the amount could not be added to the income of the assessee. Ld D.R. merely relied on orders of authorities below. 8. We have considered submissions of ld representatives of parties and orders of authorities below. 9. We observe that AO has made this addition merely on the basis of AIR information and without bringing any evidence on record that the assessee has actually received the said interest of Rs.2,66,916. It is not the case of the department that the said party was put to cross examination or the ledger account of the assessee in the books of account of the said party were given to the assessee and assessee was confronted thereon. We agree with ld A.R. that merely on the basis of AIR information and without bringing any evidence on record, it cannot be held that interest income has been received by the assessee from Rajvaibhav Enterprises (P)Ltd. Therefore, the said addition is not justified. Accordingly, we delete the addition of Rs.2,66,916 by allowing ground Nos.3 & 4 of appeal taken by the assessee.”

Following the above, we decide Ground No.1 in favour of the assessee.”

11. We further notice that a similar view has been expressed by the Co-ordinate Bench in the cases as listed hereinabove relied on by the assessee. Considering the facts and circumstances of the case and relying on the judicial precedents, we are of the considered view that the AO /CIT(A) is not correct in making the addition merely based on the information in Form 26AS without bringing any evidence on record to show that the assessee has understated its income. Accordingly, we direct the AO to delete the addition made in this regard. Ground No.1 raised by the assessee is allowed.

Disallowance under section 40(a)(i) – Ground No.2

12. During the year under consideration the assessee has made the following payments outside India.

Sr. No.	Name of the party	Amount (in Rs.)
	I. Professional fees:	
1.	<i>Deloitte & Touche LLP, USA</i>	<i>57,79,027</i>

2.	<i>Deloitte Tax LLP, USA</i>	<i>4,37,903</i>
3.	<i>Deloitte & Touche Management Services Pte. Ltd., Singapore</i>	<i>7,90,968</i>
4.	II. Purchase of publication	<i>5,43,851</i>
5.	III. Reimbursement of expenses	<i>4,76,809</i>
6.	IV. Registration charges	<i>1,41,429</i>
	TOTAL	<i>81,69,987</i>

13. The AO during the course of assessment noticed that the above payments have been made without deducting Tax at Source and therefore called on the assessee to show-cause why the amount cannot be disallowed under section 40(a)(i). The assessee submitted that the above payments were made outside India without deduction of tax at source since the said payments were not chargeable to tax under the Act and therefore it was required to deduct tax at source under section 195(1) of the Act. The assessee further submitted that the provisions of section 40(a)(i) are attracted only when any sum chargeable under the Income-tax Act which is payable outside India and on which tax is deductible but tax is not deducted at source. The assessee also made a detailed submission on the taxability of each of payments before the AO to submit that the amounts are not taxable in India and accordingly no TDS was deducted. However, the AO did not accept the submissions made by the assessee and proceeded to make addition towards all the payments as listed above totalling to Rs. 81,69,987/-. The CIT(A) confirmed the addition made by the AO.

(a) Payment of professional fees

14. The Id AR submitted that the services were rendered by Deloitte & Touche LLP, USA to the clients who required certain assistance with regard compliance under US laws. The Id AR further submitted that Deloitte Tax LLP, USA was rendering service with review of INCAT U.S. Federal and state income tax

accounting for audit assistance and preparation. The ld AR argued that the payments made are not taxable under section 9(1)(vii) since Deloitte & Touche LLP, USA and Deloitte Tax LLP, USA have rendered professional services and not technical services and drew our attention to section 194J to submit that the professional services and technical services are different. Accordingly the ld AR submitted that the payments are not liable to tax in India in view of the Article 15 of the Tax Treaty between India and USA. It is also submitted that the services are rendered outside India and therefore no tax is liable to be deducted at source. The ld AR made similar submission for payments made to Deloitte & Touche Management Services Pte Ltd, Singapore.

15. We heard the parties and perused the material on record. We notice that similar disallowance towards payments made by the assessee to Deloitte & Touche LLP, USA, Deloitte Tax LLP, USA and Deloitte & Touche Management Services Pte Ltd, Singapore, in earlier years have been considered by the coordinate bench and the same have been held to be not taxable. Further from the perusal of the nature of services rendered by these parties it is clear that the services have been rendered by these parties to third party clients directly and that the services are rendered outside India. As regards the treaty provisions between India and USA / Singapore which has "make available" clause these parties have not made available any technical or knowhow and therefore the payment is not taxable as per the treaty provisions.

(b)Purchase of Books, Reimbursement of Expenses and Registration charges

16. As regard purchase of books, the ld AR submitted that these are payments made towards purchase of publications from group entities outside India. The ld

AR further submitted that impugned transaction is on a principal to principal basis hence no income accrues in India to the non-resident entities. As regards the other 2 payments, it is argued that the payments are in the nature of reimbursements and this fact is not disputed by the revenue. The ld AR also submitted that the CIT(A) for AY 2012-13 has deleted the disallowance made towards similar payments and that the revenue did not file any appeal for the said AY.

17. We heard the parties and perused the material on record. From the perusal of the nature of transaction towards purchase of books, reimbursement expenses and registration charges we are of the view that the same cannot be treated income arising in India in the hands of non-resident parties. It is also noticed that the revenue has not preferred further appeal before the Tribunal against the order of CIT(A) in assessee's own case in AY 2012-13 where the issue is decided by the CIT(A) in favour of the assessee. In view of these discussions, in our considered view there is no requirement to deduct tax at source on the payments of registration fee and therefore, the disallowance under section 40(a)(i) not warranted.

Payments to retired partner – Ground No.3

18. The AO during the course of hearing noticed that the assessee has paid an amount of Rs. 4,41,38,383/- to ex-partners and the same is claimed as deduction under section 37(1) of the Act. The AO called on the assessee to explain why the said payment cannot be disallowed. The assessee submitted that the payments are made as per the clause agreed in the partnership deed and the said clause in the partnership deed also provides for the mechanism to compute the amount payable to the partners. The assessee further submitted that since the payment is done as per the terms agreed in the partnership deed, the payment has a prior and

overriding charge on the receipts of the assessee and gets diverted before it reaches the hands of the assessee. Accordingly, the assessee submitted that the payments made to ex-partner cannot be taxed in the hands of the assessee and should be allowed as a deduction. The AO however did not accept the submissions of the assessee and by placing reliance on the decision of the AO for AY 2008-09 and 2009-10 the entire payment was disallowed in the hands of the assessee.

19. We heard the parties and perused the material on record. The ld. AR during the course of hearing drew our attention to the partnership deed (page 154 of PB) and the relevant clauses were the right to receive payment on retirement of partners and the manner of computation of the amount payable (185 & 186 of PB). The ld. AR therefore argued that the payment made to the retiring partners is a diversion by overriding title and therefore cannot be taxed in the hands of the assessee. We notice in this regard that for AY 2008-09 the CIT(A) has allowed the deduction claimed by the assessee and the Department went on appeal before the Tribunal. The Tribunal vide order dated 23.03.2018 has held the issue against the Revenue by holding that

“13.3. We have heard the rival submissions and perused the material before us. We find that the AO had held that payment made by the assessee to the ex partners or to the spouses/legal heirs of deceased partners was application of money, that the disputed amount was to be taxed in the hands of the assessee, that the payment to ex-partners was made in pursuance of the various clauses of the partnership deed, that during the assessment proceedings a copy of the deed was submitted, that he did not took cognizance of clauses 7 and 10 of the deed, that the deed clearly provided that the ex partners or the spouses of deceased partners would be paid part of the income of the assessee for the services rendered by them, that the FAA had taken note of the relevant clauses of the partnership deed, that he followed the judgments of the Hon'ble jurisdictional High Court delivered in the case of C C Choksi (ITA 193 of 2008, dtd. 25.07. 2008), that in that matter the Hon'ble Court had, in the

identical situation, held that the payment made to ex-partners or to the spouses of the deceased partners was not application of money, that the FAA had following the judgments had held that it was a case of diversion of income by an overriding title. In our opinion, the order of the FAA does not suffer from any legal or factual infirmity. So, confirming the same, we decide the effective ground of appeal against the AO.”

20. The facts for the year under consideration being identical in our considered view the decision of the Co-ordinate Bench in assessee's own case for AY 2008-09 is applicable for the year under consideration also. Accordingly, we direct the AO to delete the disallowance made in this regard. The ground raised by the assessee is allowed.

Advances from clients – Ground No.4

21. Ground No.4 pertains to the amount treated as advances from clients by the assessee being taxed as the income of the assessee. During the year the assessee has reflected a sum of Rs. 34,94,907/- as advances received from the clients. The assessee submitted before the AO that the payments have been given in advance by the clients and that the assessee has not rendered any services against the said payments. Accordingly, it is submitted that the payments have been treated as advances. The assessee further submitted that this method of accounting of advances is consistently followed by the assessee and the advance is offered to tax as and when the services are rendered by the assessee. The AO however did not accept the submissions of the assessee and held that since the assessee is following cash system of accounting the income is chargeable on receipt basis. Therefore, the AO treated the advance as the income of the assessee and made addition accordingly.

22. The ld. AR reiterated the submission made before the lower authorities. The ld. AR further submitted that income is being offered in subsequent years once the services are rendered by the assessee and this method of accounting has been consistently followed by the assessee. The ld. AR also submitted that in the case of another group entity M/s Deloitte Haskins & Sells vs. ACIT (ITA No. 2927/Del/2013 dated 23.10.2018) a similar issue has been considered where it has been held that

“19. In its reply dated 20.12.2011, the assessee explained that sometimes it collects advance from clients before rendering services. This amount is shown advance from clients and as and when services are rendered, the same amount is transferred to professional fees account. It was explained that the amount shown as outstanding is the un-reconciled amount. It was strongly contended that the assessee suo moto offered the said amount in the tax return for assessment year 2010-11. The reply of the assessee did not find any favour with the Assessing Officer who was of the firm belief that these payments belonged to assessment year 2009-10 and have to be taxed in assessment year 2009-10 itself and taxation cannot be deferred to any subsequent year. The Assessing Officer added Rs. 89,1,930/-.

20. The assessee carried the matter before the ld. CIT(A) but without much success.

21. Before us, the counsel explained that receipt of money and not accrual of the right to receive is a determining factor. It is the say of the Id. counsel for the assessee that income must accrue first. Receipt normally follows accrual. For this proposition, reliance was placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of Punjab Tractors Co-operative Multipurpose Society Ltd 234 ITR 105 wherein the Hon'ble court has held that receipt by itself is not sufficient to attract tax.

22. The Id. counsel for the assessee further drew our attention to the decision of the co-ordinate bench in the case of DHS Chennai in ITA No. 2077/Mds/2016 order dated 25.11.2016. The Id. counsel for the assessee pointed out that similar issue was considered and decided in favour of the assessee and against the revenue by the Tribunal. It was further contended that the Assessing Officer has grossly erred in treating Rs. 89,61,930/- as advance from clients for the year under consideration. Drawing our attention

to Exhibit 14 of the paper book, it was pointed out that Rs. 37,61,336/- is the brought forward balance from earlier years and only Rs. 52,00,594/- pertained to the year under consideration.

23. Per contra, the Id. DR strongly supported the findings of the Assessing Officer. It is the say of the Id. DR that since the assessee is following the cash system of accounting, the amount shown as advance from clients is to be taxed during the year under consideration itself.

24. We have given thoughtful consideration to the orders of the authorities below. It is true that in the balance sheet, the assessee has shown advance from clients amounting to Rs. 89,61,930/-. The details of the same is at page 14 of the paper book which reads as under:

7-Apr-08	H.V. Deposit	443,350	-	-
5-May-08	EUR 1123.6 TT @ 61.2 from Deloitte AB	68,764	68,764	-
19-May-08	USD 448.96 TT @ 41.75 from 1/DT	18,744	-	-
28-May-08	USD 2040 TT @ 42.3 from Deloitte Touche	86,292	-	-
9-Jun-08	41830809128269DKK63756.59@8.61	548,944	548,944	-
14-Jun-08	H.V. Deposit	41,564	-	41,564
16-Jun-08	USD 10490 TT @ 42.4 from 1/Tohmtsu Tax	444,776	-	-
23-Jun-08	USD 4719.12 TT @ 42.4 from Deloitte and	200,091	-	-
25-Jun-08	USD 985 @42.4	41,764	41,764	-
26-Jun-08		942	-	-
11-Aug-08	H.V. Deposit	56,000	-	-
21-Aug-08	RTGS	673,394	-	-
8-Sep-08	By INST 747637 : HV check deposit	130,116	-	130,116
27-Sep-08	Bank of America SFHQ	84,270	84,270	-
22-Oct-08	USD 11657.35 TT @ 48.25 from Deloitte	562,467	-	-
7-Nov-08	Ch. No. 466067	166,572	-	-
17-Nov-08	USD 3360.8 @48.75	163,839	163,839	-
15-Dec-08	Euro 6440@62.9	402,560	-	-
15-Dec-08	Ch. No. 002230	19,926	-	-
27-Jan-09	GBP 2530@ 67.30 from Building Design Partnership	170,269	170,269	-
3-Feb-09	RTGS from Dresdner bank, Juergen	223,870	-	-
17-Feb-09	Ch. No. 88486	60,615	60,615	-
25-Feb-09		420,002	-	-
31-Mar-09	USD 1685.40@50.75 from Deloitte Touche Tohmtsu	85,534	85,534	-
31-Mar-09	NEFT	85,929	-	-
	TOTAL	5,200,594	1,223,999	171,680
	V - ■ /			
	Earlier years	3,761,336	894,464	85,534
	Grand Total	8,961,930	2,118,463	257,214
	Less: Amount adjusted in			
		FY 2009-10	2,118,463	
		FY 2010-11	257,214	
			<u>6,586,253</u>	

25. From the above, it can be seen that a sum of Rs. 21,18,463/- was adjusted in F.Y. 2009-10 and Rs. 2,57,214/- was adjusted in F.Y. 2010-11.

26. At this juncture, it would be pertinent to refer to the observations of the Hon'ble Supreme Court in the case of Excel Industries 358 ITR 295 and the same read as under:

"Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the

advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers,"

27. *As mentioned elsewhere, the assessee has offered the amount in assessment year 2010-11. Therefore, in the light of the observations of the Hon'ble Supreme Court [supra], it would be a futile exercise since the rate of tax is same.*

28. *Further, a similar issue was considered by the Chennai Bench of the Tribunal in DHS Chennai [supra]. The relevant findings read as under:*

"22 Now, coming to Revenue's appeal I.T.A. No. 2077/Mds/2016, the only issue is addition made by the Assessing Officer towards advance fee of Rs. 64,39,989/-.

23. During assessment proceedings, the Assessing Officer found that the assessee is following the cash system of accounting and received advances of Rs. 64,39,989/-. The assessee submitted to the A.O that the sum of Rs. 64,39,989/- represented the receipt of advances for the services not concluded. The bills are raised by the assessee on completion of the work and as per the method of accounting regularly followed. Not convinced with the explanation of the assessee the Assessing Officer made the addition of Rs. 64,39,989/- to the returned income.

24. Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the CIT(A). The Ld.CIT(A) allowed the assessee's claim by placing reliance on the judgment of the Delhi High Court in the case of CIT vs Dinesh Kumar Goel, 197 taxman 375(Delhi).

25. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us.

26. The Id. DR argued that the assessee-firm is following the cash system of accounting and all the receipts represent income and not offering the income on receipt basis leads to difference of income recognition and contradictory stand to the principles of accounting. Further, the Id. DR also

argued that the assessee was accounting the expenditure on cash basis, which resulted in mismatch frequently.

27. On the other hand, the Id. AR submitted that the assessee has disclosed advances of Rs. 64,39,989/- at the end of financial year 2010-11. The said advances represented advances received from clients on account of professional fees. The assessee is following cash system of accounting and the bills are raised as and when the services are rendered. No professional charges are received in advance, therefore, the same cannot take the character of income unless the invoices are raised and services are rendered. In exceptional cases, the assessee-firm received advances from clients before rendering such services. Such advances are kept in advance account. The advance received from client is transferred to professional fee account on completion of service. The assessee further submitted that the advance is a very small amount as compared to the aggregate professional fees. Apart from the above, alternatively the Id. AR submitted that the advance received during the assessment year under consideration was only Rs. 2,79,161/- which may be added to the income of the assessee if the assessee's contentions are not accepted. Further Ld. A.R submitted that on identical facts in the case of A.F. Ferguson & Co in ITA No.7792/M/04 dated 30/01/2008 Mumbai ITAT has dismissed the appeal of the revenue.

28. We heard the rival submissions and perused the material placed before us. The assessee-firm is a Chartered Accountants rendering professional services. As per Balance Sheet as on 31.3.2011 the advance outstanding was Rs. 64,39,989/-. The assessee contended that the amount of advances were received from clients for the services not yet rendered, therefore, the income is not accrued and accordingly, the advance cannot partake the character of income. Further, the assessee submitted that all advances cannot be held as income. In other words, the receipt resumes the character of income only when the services are rendered. The assessee is following the same method of accounting consistently for several years. The assessee placed reliance on the judgment of P& H High Court in the case of CIT vs Punjab Tractors Co-operative Multi-purpose Society Ltd, 234 ITR 10, decision of this Tribunal in S. Priyadarsan vs JCIT, 73 TTJ 738 and on identical issue in the case of associated concern of the assessee viz. A.F. Ferguson & Co., in I.T.A. No.7792/Mum/2004 dated 30.1.2008, ITAT Mumbai. In the facts and circumstances of the case, we agree with the submission of the assessee that the advance cannot be treated as income in the hands of the assessee unless the services are rendered by the assessee. The Assessing Officer has not made out a case that advances received in question were towards the services rendered by the assessee. The Id. DR also could not bring any evidence to controvert the submissions made by

the assessee. In view of the above facts and placing reliance on the decisions relied upon by the assessee cited (supra) we do not find any reason to interfere with the order of the CIT(A) and accordingly we uphold the same.

In the result, the Revenue's appeal is dismissed."

29. Respectfully following the observations of the Hon'ble Supreme Court and the findings of the co-ordinate bench [supra], we direct the Assessing Officer to delete the addition of Rs. 89,61,930/-. Ground No. 2 with its sub grounds is allowed."

23. The ld. DR on the other hand vehemently argued that the assessee by treating the receipt as advances is following a hybrid system of accounting which is not acceptable. The ld. DR further submitted that in assessee's case the claim that the advance has been offered to tax in the subsequent year has not been examined and therefore the above decision of the Delhi Bench of the Tribunal cannot be directly applied in assessee's case.

24. We heard the parties and perused the material on record. From the observations of the Delhi Bench of the Tribunal in the above case, it is clear that all receipts in the hands of the assessee cannot assume the character of income and that the amount received becomes income only when the services are rendered. In assessee's case it is submitted that no service has been rendered towards payments treated as advances and that the same is recognized as income once the services are rendered. Therefore, in our considered view the ratio laid down by the Co-ordinate Bench in the above case is applicable in assessee's case also and accordingly we hold that no addition towards advances received from clients should be made for the reason that the services have not been rendered towards those circumstances. We therefore, direct the AO to delete the addition in this regard.

Short credit of TDS – Ground No.5

25. The ld. AR in this regard drew our attention to the details furnished before the AO with regard to the breakup of TDS claimed in the return of income. The ld. AR further submitted that the AO has not given credit to the tune of Rs. 2,64,99,224/- and that no breakup of the said amount is made available to the assessee to understand the reasons for denial of credit. The ld. AR accordingly prayed for the direction in this regard. We notice that the AO has given short credit of TDS to the tune of Rs. 2,64,99,224/-. In our view there is merit in the contention that without the breakup of the amount not given credit, the assessee is not in a position to contend the short credit of TDS and submit any further details in this regard. Therefore we direct the AO to provide the breakup of the amount of TDS short credited to the assessee so that the assessee can substantiate the claim by submitting the relevant details / evidence. The AO is further directed to examine the documents to be submitted and allow credit in accordance with law. This ground is allowed for statistical purposes.

26. Ground No. 6 & 7 with regard to interest under section 234B and 244A are consequential not warranting any separate adjudication.

27. In result, appeal of the assessee is allowed.

ITA No. 289/Mum/2024 AY 2011-12

28. The assessee filed the return of income for AY 2011-12 on 28.09.2011 declaring a total income of Rs. 10,25,41,045/-. The assessee filed revised return of income on 28.03.2013 revising the TDS claim made in the original return of income. The AO completed the assessment by making the following additions:

- | | | |
|-------|--|---------------------|
| (i) | Unaccounted Professional Charges as per information from Form 26AS | – Rs. 38,26,106/-. |
| (ii) | Advances received from clients | – Rs. 5,52,698/-. |
| (iii) | Payments outside India without deducting TDS | – Rs. 57,11,338/-. |
| (iv) | Payment to retired partners | – Rs. 5,20,17,509/- |

29. With regard to Ground No.1 on the un-reconciled balance between Form 26AS and books of accounts being treated as unaccounted income of the assessee. The ld. AR submitted that for the year under consideration the assessee reconciled the entire balance and the same was submitted before the AO during the remand proceedings. The ld. AR argued that the said reconciliation has not been considered by the revenue and the entire amount is treated as unaccounted.

30. We heard the parties and perused the material on record. We have while deciding the similar issue for AY 2010-11 have held that the addition cannot be made merely based on the amount reflected in Form 26AS and that the burden is on the AO to substantiate the claim that the impugned amount are received by the assessee for making the addition. In assessee's case for the year under consideration, the assessee has furnished the entire details of reconciliation (page 43 to 67 of PB) which have not been examined by the lower authorities. Since the facts for AY 2011-12 are identical in our considered view our decision on the impugned issue in AY 2010-11 is mutatis mutandis applicable for the year under consideration also. Accordingly, we direct the AO delete the addition made towards difference between the amount reflected in Form 26AS and books of account.

31. Ground No. 2 is with regard to advance received from clients being added as income of the assessee. We have while considering the same issue for AY 2010-11 have held that the addition cannot be sustained by placing reliance on the decision of the Delhi Bench of the Tribunal in the case of M/s Deloitte Haskins & Sells

(supra). The facts for the year under consideration are identical and therefore we hold that the AO is not correct in treating the advance amount as the income of the assessee since has not rendered services with regard to the advance received. Accordingly, we direct the AO to delete the addition made in this regard.

32. Ground No.3 is with regard to the disallowance made under section 40(a)(i) towards payments made to the following parties without deducting tax at source.

(i)	Deloitte & Touche LLP, USA	– Rs. 19,63,946/-.
(ii)	Deloitte Tax LLP, USA	– Rs. 23,03,943/-.
(iii)	Deloitte & Touche Management Services Pte Ltd., Singapore	Rs. 7,72,535/-.
(iv)	Deloitte AB Sweden	– Rs. 3,74,166/-
(v)	Purchase of publication	– Rs. 2,96,746/-

33. We have while deciding the appeal for AY 2010-11 have held that the payments made to Deloitte & Touche LLP, USA, Deloitte Tax LLP, USA and Touche Management Services Pte Ltd., Singapore as not taxable in India by following the decision of the coordinate bench in earlier years. On perusal of nature of payments made to these entities during the year under consideration, we notice that the payments are similar in nature towards services rendered outside India and that they are professional in nature i.e. not technical. Therefore in our considered view, our decision with respect payments made to these parties in AY 2010-11 is mutatis mutandis applicable to the year under consideration also. Accordingly we hold that payments made to Deloitte & Touche LLP, USA, Deloitte Tax LLP, USA and Touche Management Services Pte Ltd., Singapore are not liable for tax deduction at source and therefore no disallowance can be made under section 40(a)(i) in this regard.

34. With regard to payment made to AB Sweden, the ld AR submitted that –

- During the P.Y. 2010-11 relevant to the A.Y. 2011-12, the assessee paid professional fees of Rs.3,74,166 to Deloitte AB, Sweden. Deloitte AB, Sweden has prepared and filed returns in Swedish for employees of Sandvik. Deloitte Sweden has rendered professional services in filing return of income of these employees per Swedish Tax Laws. The entire service is rendered outside India.
- For rendering the aforesaid professional services, Deloitte AB, Sweden has raised the invoice. The assessee has remitted the said amount to Deloitte AB, Sweden without deduction of tax at source based on the certificate obtained from a chartered accountant.
- The reasons for non taxability of remittances in the hand of Deloitte AB, Sweden are summarized below:
 - (i) The assessee submits that provisions of section 9(1)(vii) are applicable in respect of income by way of fees for technical services and not to fees paid for professional services. Deloitte AB, Sweden has rendered professional services and not technical services. Therefore, the assessee submits that the provisions of section 9(1)(vii) are not applicable to the payments made to Deloitte AB, Sweden. The assessee inter alia relies on the Tribunal decision in the case of NQA Quality System Registrar Ltd. v. Dy. CIT 92 TTJ 946 (Del).
 - (ii) Without prejudice to the above, even if it is held that payments of professional fees of Rs.7,72,537 are taxable under the provisions of the Income-tax Act, the assessee submits that the same is not taxable in view of Article 14 and Article 12 of the Tax Treaty between India and Sweden read with Protocol.

35. We heard the parties and perused the material on record. The main contention of the assessee with regard to payments made to Deloitte AB Sweden, is that the services rendered are professional services and not technical services and therefore not taxable as per the provisions of section 9(1)(vii) of the Act. We see merit in the said submission of the ld AR since we notice that the services

rendered are towards tax return filing of employees in Sweden which in our view is a professional service. In this regard it is relevant to look at Article 15 of the DTAA between India and Sweden which reads as under –

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may be taxed in the other Contracting State :

<i>(a)</i>	<i>if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case only so much of the income as is attributable to that fixed base may be taxed in the other State; or</i>
<i>(b)</i>	<i>if his stay in the other State is for a period or periods aggregating 183 days or more in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.</i>

2. The term 'professional services' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

36. From the perusal of the above article it is clear that the nature of services by Deloitte AB Sweden are professional services that would become taxable in India only if the non-resident entity has a PE in India. Therefore this payment made to Deloitte AB Sweden who is non-resident not having a PE in India is not taxable under the DTAA between India and Sweden. The Id. DR argued that the services rendered by the assessee are in the nature of technical services under Article 13 and that Article 13 excludes the independent personal services rendered by individuals only. Therefore Ld. DR submitted that the payments made to Deloitte AB Sweden cannot be excluded under Article 13 and has to be considered as fees for technical services. We are unable to appreciate the said contention of the Id DR

for the reason that the services rendered by Deloitte AB Sweden are in the nature of professional services that is specifically covered under Article 15 and as per the said Article, Deloitte AB Sweden cannot be taxed in India for the services rendered in Sweden for filing the tax returns as per Swedish law. Considering the nature of services and Article 15 of the DTAA between India and Sweden in our view, the requirement to examine the impugned Article 13 as fees for technical services does not arise. In view of these discussion, we hold that the payments made by the assessee to Deloitte AB Sweden is not taxable in India and therefore the assessee is not required deduct tax at source. As a result the question of making disallowance under section 40(a)(i) does not arise.

37. With regard disallowance made towards purchase of books, we notice that the payments are made to Deloitte UK as reimbursement of expenditure towards supply of 1500 copies of IFRS publications. The AO has disallowed the amount under section 40(a)(i) stating that the assessee did not deduct tax at source on the same. We have while adjudicating a similar issue for AY 2010-11 have held that the payments made towards purchase of publications is not taxable in India and that there is no requirement to deduct tax at source. Since the nature of payments made during the year under consideration being similar, our decision in this regard in AY 2010-11, is mutatis mutandis applicable to AY 2011-12 also. Accordingly we direct the AO delete the disallowance made in this regard.

38. Ground No.4 is with regard to payment to retired partners is identical to the ground raised for AY 2010-11. The facts being identical, we are of the view that our decision for AY 2010-11 mutatis mutandis applicable to the impugned issue in the year under consideration also. Accordingly, we hold that the disallowance made by the AO towards payment to retired partners is not sustainable.

39. Ground No.5 is with regard to short credit of TDS to the tune of Rs. 1,44,30,796/-. In this regard we direct the AO to provide the breakup of the amount of short credit of TDS to enable the assessee to submit the necessary details to substantiate the claim. The AO is further directed to allow the credit in accordance with law based on the details to be furnished by the assessee.

40. Ground No.6 pertaining to interest under section 244A and Ground No. 7 pertains to the calculation error are consequential and do not warrant a separate adjudication.

41. Ground No. 8 is general.

42. In result, appeal of assessee for AY 2011-12 is allowed.

ITA No. 292/Mum/2024 for AY 2014-15

43. The assessee filed the return of income for AY 2014-15 on 29.09.2014 declaring a total income of Rs. 10,50,19,930/-. The assessee filed the revised return of income on 31.03.2016 revising the TDS credit claimed in the original return of income. The AO completed the assessment by making the following additions:

- | | | |
|-------|---|---|
| (i) | Payment outside India without deducting TDS | |
| | | disallowed under section 40(a)(i) – Rs. 1,37,90,368/- |
| (ii) | Payment to retired partner | – Rs. 8,42,75,884/-. |
| (iii) | Un-reconciled balance as per Form 26AS | |
| | added as income | – Rs. 8,20,291/-. |

44. Ground No. 1 is with regard to disallowance under section 40(a)(i) towards payments made by the assessee to the following parties without deducting tax at source.

(i)	Deloitte AB Sweden	– Rs. 2,62,708/-.
(ii)	Deloitte & Touche Management Services Pte. Ltd. Singapore	– Rs. 89,207/-.
(iii)	Navex Global Inc. USA	– Rs. 2,21,926/-.
(iv)	Reimbursement of expenses	– Rs. 76,38,566/-.
(v)	Refund of excess fees received	– Rs. 49,50,984/-.
(vi)	Thomson Reuters (Professional) UK Ltd.	– Rs. 1,97,896/-.
(vii)	Registration charges – Rs. 4,29,080/-.	

45. We notice that the nature of payments made to Deloitte AB Sweden, Deloitte & Touche Management Services Pte. Ltd., Singapore, Reimbursement of expenses, and Registration charges are similar to payments made in AY 2010-11 & AY 2011-12. Therefore we hold that our decision in AY 2010-11 & AY 2011-12 is mutatis mutandis applicable to the year under consideration also towards these payments. Accordingly we hold that the assessee is not required to deduct tax at source on payments made to Deloitte AB Sweden, Deloitte & Touche Management Services Pte. Ltd., Singapore, Reimbursement of expenses, and Registration charges and therefore no disallowance under section 40(a)(i) is warranted.

46. With regard to payments made to Navex Global Inc. USA., the ld. AR submitted that during the previous year 2013-14 relevant to the assessment year 2014-15, the assessee paid subscription fees of Rs.2,21,926 to Navex Global Inc. USA. The ld. AR further submitted that Navex Global Inc. is the 'integrity' helpline administered by third party to maintain confidentiality and anonymity of the person reporting the breach. The ld. AR also submitted that Navex Global Inc. services are used by the assessee to enable anyone to report potential ethics and

compliance issues either on an anonymous or named basis by either logging onto the website or calling the Integrity Helpline and enables assessee information/details from the reporter of the issue and generate reports. The Id AR argued that the payment is merely to access the aforesaid portal and therefore the same cannot be treated as Royalty or fees for technical services

47. We heard the parties and perused the material on record. From the perusal of the nature of payment to Navex Global Inc., USA it is clear that it is towards providing access to any person to raise any complaint on a breach and it helps the assessee by accessing the said report to get the details of compliance issues and breaches. Therefore we see merit in the contention that the subscription fees paid to Navex Global Inc., USA is not for use or right to use any process and therefore cannot be said to be "Royalty" as per Article 12(3)(a) of the Tax Treaty between India and USA. Further Navex Global Inc., USA by providing the aforesaid services does not make available technical knowledge experience, skill, know-how, or processes nor does enable the assessee to apply the technology contained. Accordingly in our considered view payment towards the services cannot be considered as "Fees for included services under 12(4) of Tax Treaty between India and USA. The Id AR also submitted that Navex Global Inc. does not have a PE in India and therefore is not liable to tax as per Article 7 of Tax Treaty between India and USA. In view of these discussions and considering the nature of payment made to Navex Global Inc., USA, we are of the view that the impugned payment is not taxable in India in the hands of Navex Global Inc., USA and therefore the assessee is not liable to deduct tax at source. Accordingly, the disallowance under section 40(a)(i) cannot be made towards payment made to Navex Global Inc., USA.

48. With regard to payments made to Thomson Reuters (Professional) UK Ltd, the ld AR submitted that the it is towards renewal of annual subscription fees towards data base access called "World Check". Considering the nature of payment, it is clear that the payment is towards providing access to data base which is a collation of information which is otherwise available in the public domain. Further the data base is not owned by the assessee but by the third parties, and the assessee has paid the fees merely to access the said data base. Therefore there is merit in the submission that the payment of subscription is not in nature of royalty as defined in Article 12(3) of DTAA between India and UK. Further the service neither makes available any technical knowledge, skill, know-how or processes nor enables appellant to apply technology contained therein. Accordingly the payment for subscription fees cannot be regarded as fees for technical services as per Article 12(4) of DTAA between India and UK. In view of these discussions and considering the nature of payment made to Thomson Reuters (Professional) UK Ltd, we are of the view that the impugned payment is not taxable in India in the hands of Thomson Reuters (Professional) UK Ltd and therefore the assessee is not liable to deduct tax at source. Accordingly, the disallowance under section 40(a)(i) cannot be made towards payment made to Thomson Reuters (Professional) UK Ltd.

49. With regard to treatment of refund of excess fees as a disallowance under section 40(a)(i), the ld AR during the course hearing drew our attention to the below break up as submitted before the lower authorities –

Sr. No.	Name of the Recipient	Particulars	Amount (Rs.)
1	Deloitte Tohmatsu Tax Co.	Repayment of excess amount received from Deloitte Tohmatsu Tax Co. of Japan on our invoice	9,020
2	Deloitte Touche Tohmatsu LLC	Repayment of excess amount received from Deloitte Touche Tohmatsu LLC of	57,714

		Japan on our invoice	
3	Dolomies Chaux SA	Repayment of wrong (double) payment received from Dolomies Et Chaux on our invoice	3,15,876
4	Deloitte Tax LLP	Repayment of wrong payment received from Deloitte Tax LLP	1,62,188
5	Mercer Non US Equity MF Cash Steeve IXSE	Repayment of wrong payment received from Mercer funds	44,06,186
	Total		49,50,984

50. From the perusal of the above details it is clear that the amounts are refund towards excess fees received from these parties. Hence we see merit in the submission that these payments are not in the nature of income in the hands of the recipients to be taxed in India. We also notice that the lower authorities have not examined the details submitted towards nature the nature of payments and have considered the payments as taxable in India without appreciating the real nature of the payments. In view of these discussions we hold that the disallowance made by the AO under section 40(a)(i) towards refund of excess fees received for non-deduction of tax at source is not tenable.

51. Ground No. 2 is with regard to payment to partners and the facts being identical our decision in AY 2010-11 on the impugned issue is mutatis mutandis applicable for the year under consideration also. Accordingly, we direct the AO to delete the disallowance made towards payments to retired partners.

52. Ground No.3 is with regard to the addition made on the basis of un-reconciled transaction appearing in Form 26AS and the books of account. The Id. AR brought to our attention that the assessee has submitted a complete reconciliation on the un-reconciled balance before the AO during remand proceeding and that the same has not been considered. On perusal of facts for the

year under consideration, we are of the view that our decision on the same issue for AY 2010-11 is mutatis mutandis applicable to AY 2014-15 also. Accordingly, we hold that the AO is not correct in making the addition merely based on the amount appearing in Form 26AS and accordingly directed to delete the addition made.

53. Ground No.4 pertains to the short credit of TDS. Since the facts are identical to AY 2010-11, we are remitting the issue back to AO for the year under consideration also with similar directions.

54. Ground No.5 pertains to interest under section 244A which is consequential and does not warrant separate adjudication. Ground No. 6 is general.

55. In the result, appeal of the assessee for AY 2010-11, 2011-12 and 2014-15 are allowed.

Order pronounced in the open court on 04-02-2025.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai