

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No. 2309/DEL/2018 (A.Y 2012-13)

&

I.T.A. No. 2310/DEL/2018 (A.Y 2014-15)

(THROUGH VIDEO CONFERENCING)

Walker Chandilok & Co. LLP L-41, Connaught Circus, Connaught Place, New Delhi AAAFW4298E (APPELLANT)	Vs	ACIT Circle-61(1) New Delhi (RESPONDENT)
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Appellant by	Ms. Sweety Kothari, Adv
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	02.09.2021
Date of Pronouncement	16.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 31/01/2018 passed by CIT(A)-20, New Delhi for Assessment Year 2013-13 & 2014-15.

2. The grounds of appeal are as under:-

I.T.A. No. 2309/DEL/2018 (A.Y 2012-13)

"1. The CIT(A) erred in law and on facts in confirming the disallowance of an amount of TDS payable of Rs. 30,03,217/- outstanding on 31 March 2012 though paid within the due date prescribed by the Act by holding that the

same is not allowable deduction as the same was not paid during the year as the assessee followed cash system of accounting ignoring the facts and submissions placed on record. Thus the addition so made should be deleted.

2. The CIT(A) erred in law and on facts in confirming the disallowance of an amount of Rs. 4,24,941/- being 4/5th of the electricity expenses of L-41 office averring the said premises are being used by M/s Bhakru & Associates, M/s Unravel Mercantile (P) Ltd., M/s Grant Thornton India (P) Ltd. and M/s Walker Chandiook & Associates ignoring the submissions and evidences placed on record. Thus the disallowance so made should be deleted.

3. The CIT(A) erred in law and on facts in confirming the disallowance of interest u/s 40(b) of the Act of Rs. 1,53,887/- paid to partner of the firm ignoring the fact that the partnership deed clearly provides for allowance of such interest and the said issue has been examined in earlier years wherein the same has been duly allowed to the assessee firm. Thus the disallowance so made should be deleted”

I.T.A. No. 2310/DEL/2018 (A.Y 2014-15)

1. The CIT(A) erred in law and on facts in confirming the disallowance of an amount of TDS payable of Rs. 43,82,629/- outstanding on 31 March 2014 though paid within the due date prescribed by the Act by holding that the same is not allowable deduction as the same was not paid during the year as the assessee followed cash system of accounting ignoring the facts and submission placed on record. Thus the addition so made should be deleted.

2. The CIT(A) erred in law and on facts in confirming the disallowance of an amount of Rs.6,62,519/- being 4/5th of the electricity expenses of L-41 office averring the said premises are being used by M/s Grant Thornton India LLP, M/s Unravel Mercantile (P) Ltd., M/s Grant Thornton Advisory Private Ltd. and M/s Walker Chandiook & Associates ignoring the submissions and evidences placed on record. Thus the disallowance so made should be deleted.

3. Both the appeals are contested on identical issues, therefore, we are taking facts of Assessment Year 2012-13. The assessee is a Chartered Accountant Firm by profession derived income from business or profession. Return of income declared at Rs. 20,83,58,070/- was filed on 29/09/2012 and revised return was filed on 28/3/2014 declaring income of Rs. 20,83,070/-. The Assessing Officer passed assessment order dated 30/03/2015 thereby making disallowance of expenses which have not been paid in the relevant Financial Year to the extent of Rs. 11,86,074/- as well as disallowance of interest paid to partners to the extent of Rs. 38,34,686/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT (A) partly allowed the appeal of the assessee.

5. As regards Ground No. 1, the Ld. AR submitted that the disallowance of an amount of TDS payable of Rs.30,03,217/- outstanding on 31st March, 2012 was paid within the due date prescribed by the Act. But the CIT(A) ignored this and confirmed the addition of the Assessing Officer observing that the same is not allowable deduction as the same was not paid during the year as the assessee followed cash system of accounting. The Ld. AR submitted that no addition on this ground was made till Assessment Year 2010-11 by the Revenue and the additions were first time made in Assessment Year 2011-12, wherein it was deleted by the CIT(A) for which no appeal was filed by the Revenue. The Ld. AR relied upon the decision of the ITAT in case of Deloitte, Haskins and Sells Vs. ACIT ITA No. 3715/Del/2017 order dated 15/1/2021 wherein the said addition was deleted.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The assessee is constantly following cash system which is not disputed by the Revenue. In the previous Assessment Years, no additions were made except in Assessment Year 2011-12 which was deleted by the CIT(A). Thus, the Revenue is continuously taking the stand that the TDS payables outstanding are proper. The decision in case of Deloitte (supra) is apt in the present case as the assessee has paid the said amount within the due date prescribed by the Act. Thus, Ground No. 1 of the assessee's appeal is allowed.

8. As regards Ground No. 2 is related to disallowance of amount of Rs. 4,24,941/- being 4/5th of the Electricity expenses of L-41 Office averring the said premises are being used by the M/s Bhakru and Associates, M/s Unravel Mercantile Pvt. Ltd., M/s Grant Thornton India Pvt. Ltd. and M/s Walker Chandiok & Associate. The Ld. AR submitted that the evidences placed on record was totally ignored by the Assessing Officer as well as the CIT(A). The Ld. AR further submitted that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case in Assessment Year 2010-11 and 2011-12 and the additions were deleted.

9. The Ld. DR relied upon the assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant materials available on record. After going through the evidences placed before the Assessing Officer, it can be seen that the assessee has given a plausible explanation. The Assessing Officer has made an estimated disallowance which is not supported by any evidence at all. Besides this, the issue contested herein is already decided in favour of the assessee in preceding years upon which the CIT(A) has relied upon in the order. There is no distinguishing facts pointed out

by the Ld. DR. Therefore, Ground No. 2 is allowed.

11. As regards Ground No. 3, relating to disallowance of interest u/s 40(b) of the Act of Rs. 1,53,887/- paid to partner of the firm, the Ld. AR submitted that the Assessing Officer as well as the CIT(A) ignored the fact that the partnership deed clearly provided for allowance of such interest and the said issue was examined in earlier years wherein the same was allowed to the assessee firm.

12. The Ld. DR relied upon the assessment order and the order of the CIT(A).

13. We have heard both the parties and perused the material available on record. It is pertinent to note that the partnership deed clearly provided for allowance of such interest and the said issue was examined in earlier years wherein the same was restored to the file of the Assessing Officer. The Tribunal in ITA No. 97/Del/2015 vide order dated 31.05.2018 held as under:

21. In respect of ground No. 10 regarding disallowance of interest u/s. 40(b) of the Act of Rs.20,43,675/- paid to Mr. Vinod Chandiok, we find that it has been calculate as per the terms of partnership deed clause (5), but the IT Act does not permit to allow the interest paid to partners as per the partnership deed. In this regard, the relevant provisions of the IT Act is as under :

(iv) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate of twelve per cent simple interest per annum; or It is clear from the above section that the payment of interest to the partners who are authorized in the partnership deed, has to be calculated in view of the provisions of section 40(b)(iv) of the Act and as per the method given in the partnership deed. The Assessing Officer appears to have wrongly calculated.

The contention of the assessee that there is no loss to revenue because the partner has shown this amount as his income and both the partner and the partnership firm are assessable in the same bracket of 30%, is not acceptable for the reason that the intention of the IT Act is to collect tax from the right

person as per law. The Assessing Officer also appears to have wrongly interpreted clause (5) of the partnership deed stating that first party was not authorized to receive interest. In presence of these facts, we restore this issue to the file of the Assessing Officer to calculate the interest payable to partner as per provisions of section 40(b)(iv) of the IT Act. Accordingly, this ground is allowed for statistical purposes.

22. In view of the above discussion, the appeal of the assessee deserves to be partly allowed.”

The facts are identical in the present assessment year as well, hence, we are restoring the issue to the file of the Assessing Officer to calculate the interest payable to partner as per provisions of section 40(b)(iv) of the Income Tax Act. Needless to say the assessee be given opportunity of hearing by following principles of natural justice. Thus, Ground No. 3 is partly allowed for statistical purpose.

14. As regards to ITA No. 2310/Del/2018 for A.Y. 2014-15, the issues are identical in respect of Ground No. 1 and 2 and no contrary facts pointed out by the Ld. DR. Therefore, same observations given by us for A.Y. 2012-13 are applicable in A.Y. 2014-15. Thus, Ground No. 1 and 2 are allowed.

15. In result, the appeal of the assessee being ITA No. 2309/Del/2018 is partly allowed for statistical purpose and ITA No. 2310/Del/2018 is allowed.

Order pronounced in the Open Court on this 16th Day of September, 2021

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 16/09/2021
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI