

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ' A ' NEW DLEHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.1256/Del/2017
Assessment Year: 2012-13**

Arvind Kaushik,
WA-116, Shakarpur, Delhi.

vs.

Income-tax Officer,
Ward 60(5), New Delhi.

PAN : AJKPK8536G
(Appellant)

(Respondent)

Appellant by : Sh. Sameer Kapoor, Advocate
Respondent by: Sh. Jagdish Singh, Sr.DR

Date of hearing: 27/07/2021
Date of order : 27/07/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 10/01/2017 passed by the learned Commissioner of Income Tax (Appeals)-19, New Delhi ("Ld. CIT(A)") for the assessment year 2012-13, Arvind Kaushik ("the assessee") filed this appeal.

2. Briefly stated, relevant facts are that the assessee is the proprietor of M/s. Krishna Consultants and is engaged in the business of recovery and collection agent on behalf of certain banks. He filed return of income on 25.02.2013 declaring income of Rs.10,88,200/-. Assessment u/s. 143(3) of the Income-tax Act, 1961 ("the Act") was, however, complete at an income of Rs.2,05,43,440/- by making several additions.

3. Aggrieved by such additions, assessee preferred appeal before the Id. CIT(A) and by way of the impugned order, Id. CIT(A) granted partial relief to the assessee by deleting certain additions and remitting the amounts in respect of certain additions. In so far as this appeal is concerned, the relevant additions sustained by the CIT(A) are –

- (i) Rs.3,98,932/- u/s. 40(a)(ia) on account of non-deduction of TDS u/s. 194J on consultation expenses incurred by the assessee; and
- (ii) Rs.39,84,917/- the amount sustained out of disallowance of salary to the employees.

4. Aggrieved by such an act of the Id. CIT(A) by way of impugned order, the assessee preferred this appeal on five grounds, but at the time of arguments, given up grounds Nos. 3 to 5 and confined the scope of limit to the sustenance of addition to the extent of Rs.3,98,932/- u/s. 40(a)(ia) of the Act and Rs.39,84,917/- on account of disallowance of salary to the employees.

5. Coming to the addition in respect of section 40(a)(ia) of the Act, the assessment order speaks that the assessee failed to furnish evidences of TDS in respect of the payments made to the consultancy charges u/s. 194J of the Act and, therefore, addition was made to the extent of Rs.10,39,141/-. Learned CIT(A), after obtaining the remand report from the Assessing Officer, gave a categorical finding that in respect of about 9 persons, an amount exceeding Rs.20,000/- on a single day was paid without deducting tax at source u/s. 194J of the Act and therefore, disallowance has to be made in respect of such amounts u/s. 40(a)(ia) of the Act. Assessee challenged this extent of the disallowance, i.e., Rs.3,98,932/-.

6. However, at the time of arguments, Id. AR submitted that in so far as the factual finding of the authorities below is concerned, there is much to submit but the assessee concedes the same. However, assessee submits that under section 40(a)(ia), as amended by Finance Act, 2014 w.e.f. 01.04.2015, the disallowance of expenses on account of non deduction of TDS should be restricted to 30% of the expenses in view of the fact that the amendment made by the Finance Act (2) to section 40(a)(ia) is curative in nature and is, therefore, also applicable to the assessment year under consideration. He submits that though this amendment is w.e.f. 01.04.2015, but the judicial authorities held it to be curative in nature and retrospective. He placed reliance on various Tribunal orders in the cases of M/s. R. H. International Vs. ITO (ITA No. 6724/Del/2018)dated 20.03.2019, Rajendra Yadav Vs. ITO for the A.Y. 2007-08 order dated 29.01.2016 (Jaipur Bench), Smt. Kanta Yadav Vs. ITO (ITA No. 6312/Del/2016) dated 12.05.2017 and Umaxe Projects (P) Ltd. Vs. DCIT (ITA No. 206/Del/2019). Basing on this, learned AR prayed that instead of disallowing the entire amount in respect of which TDS was not deducted, only 30% thereof may be disallowed. Ld. DR relied on the findings of the authorities below.

7. We have gone through the records in the light of submissions made on either side. Amount of the subject matter of disallowance is not in dispute, which is Rs.3,98,932/-. However, the question is whether entire amount has to be disallowed or only 30% thereof has to be disallowed. Though the Finance Act of 2014 made an amendment to section 40(a)(ia) of the Act w.e.f. 01.04.2015, but in the decisions relied by the assessee, various Benches of Tribunals including Delhi Benches of Tribunal consistently held that such amendment is curative in nature. In R.H.

International (supra), it is clearly held that disallowance u/s. 40(A)(ia) of the Act has to be restricted only to 30% of the expenses paid as against 100% because the amended provision made to section 40(a)(ia) by Finance (No 2) Act, 2014 is curative in nature and the same should be applied retrospectively. Inasmuch as no contrary decision is available with us, we are of the considered opinion that such a view consistently taken by the Tribunals has to be followed. With this view of the matter, we direct the Assessing Officer to restrict the disallowance to 30% of the amount paid in respect of which TDS should have been made. We accordingly, allow ground No. 1 partially.

8. Now, coming to ground No.2, the assessment order speaks that towards recovery sub-agents expense, the assessee incurred an expenditure of Rs.1,30,71,097/-, but the assessee failed to furnish the details thereof. Assessing Officer, therefore, disallowed a sum of Rs.1,30,71,097/- for non-compliance of section 194H and consequently disallowed it u/s. 40(a)(ia) of the Act. Learned CIT(A) noted that out of 144 employees in respect of whom the salary expense of Rs.1,30,71,097/- was said to have been incurred, the ICICI Bank stated that 60 persons rendered service. Learned CIT(A) allowed such an expense to the tune of Rs.90,86,180/-. However, learned CIT(A) noted that about 42 other persons were drawing a salary around Rs.15000/ per month whereas the regular employees to whom these 42 persons were expected to assist, were drawing salary far less than these 42 persons. Learned CIT(A), therefore, thought that it is unlikely that employees drawing more salary would be assisting the employees drawing less salary and they cannot be termed as junior employees, as claimed by the assessee. Learned CIT(A), basing on the denial of ICICI bank as to the 42 persons rendering any

service coupled with the improbabilities of these persons assisting the employees with less salary, concluded that these 42 persons might not have rendered service.

9. It could be seen from the impugned order that in respect of some of these employees, payments were made by way of cheques. We find some substance in the argument of the Id. AR that ICICI Bank might have refused to reimburse the entire so called salary expenses said to have been incurred by the assessee, but since the business of the assessee is a different one, if really, the assessee incurred such expenses, it cannot be disallowed. For this purpose, the verification at the end of the authorities below is not complete and they based their findings on surmises and conjectures. After hearing both the sides, we are of the considered opinion that in the present scenario, no purpose worth would be served by remanding the matter to the file of Assessing Officer to undertake the fresh exercise in this regard. Instead, we are of the considered opinion that ends of justice would be met by making disallowance of 25% in respect of salary expense of these 42 persons. We, therefore, direct the Assessing Officer to disallow 25% out of the disallowance of Rs.39,84,917/-. Subject to this observation, ground No. 2 is allowed in part.

10. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this the 27th day of July,
2021. Sd/- Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 27/07/2021
'aks'