

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DLEHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA Nos. 1007 & 1008/Del/2018
Assessment Year: 2013-14 & 2014-15

Harish N. Salve,
6E, White House,
10, Bhagwan Dass Road,
New Delhi.

vs.

ACIT, Circle 61(1),
New Delhi

PAN : AHFPS7386B
(Appellant)

(Respondent)

Appellant by : Sh. Sachit Jolly, Advocate
Ms. Disha Jham, Advocate
Respondent by: Sh. Shailesh Kumar, Sr. DR

Date of hearing: 24.02.2021

Date of order : 24.02.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the orders dated 29.12.2017 passed by the learned Commissioner of Income Tax (Appeals)-20, New Delhi ("the Ld. CIT(A"), for the assessment years 2013-14 and 2014-15, Harish N. Salve("the assessee"), preferred these appeals.

2. Since the facts and issues involved in both the matters are identical, we deem it just and convenient to dispose them of by this common order.

3. Brief facts of the case are the assessee is an Advocate by profession and derives income from business or profession, house property, capital gains and also income from other sources. During the course of assessments for the assessment years 2013-14 and 2014-15, the Assessing Officer found that the assessee claimed Rs.34,19,730/- for the assessment year 2013-14 and Rs.84,40,301/- for assessment year 2014-15 under the head "Assistance to Law Students", and when asked, submitted that the assistance paid to law students Diksha Sharma and Krishna Prasad K. V. at Oxford is the justification for such claim. It was further stated by the Assessing Officer that the very same plea was taken by assessee for the assessment year 2014-15 also.

4. While disallowing such a claim of assessee, the Assessing Officer observed that the facts for this year are similar to the ones in earlier assessment years and therefore, similar disallowance had to be made on the ground that the assistance to law students, who are nowhere related to the profession of the assessee, and such claim as a business expense is not acceptable to have been incurred wholly and exclusively for the purpose of business/profession of the assessee.

5. Assessee preferred appeals and the Id. CIT(A) did not accept the plea taken by the assessee and dismissed the same. Hence, assessee preferred these two appeals.

6. It is the submission of the Id. AR that the assessee who is an established Sr. Counsel in India, was focusing on international practice and spent considerable amount of time, taking on international arbitration work in London and other international centers such as

Singapore; that in this process, since this whole profession is based on developing contacts and UK being a center wherein the academicians are an active part of legal fraternity, the Assessee decided to provide funding for education of Indian students in the Oxford University; that the support was to be provided to top Indian students interested in pursuing law degree in UK; that this move was not only to support the Assessee in creating goodwill amongst academia in UK and in turn creating a name/develop contacts in legal fraternity but also to support the juniors in chambers who may go abroad become technical sound and help in preparing the cases involving complex issue of international taxation and commercial laws; and that accordingly, in all circumstances, the decision to fund the students was a business decision to support the Assessee in his profession as a lawyer and therefore, expense of Rs.34,19,730/- and Rs. 84,40,301/-incurred for this purpose was claimed as an expenditure for both the assessment years respectively.

7. He further submitted that when a similar disallowance was made in the assessment year 2011-12, a coordinate Bench of this Tribunal deleted the disallowance and the facts and question of law remained the same and such order has been followed by other coordinate Bench in ITA No. 2705/Del/2017 for assessment year 2012-13.

8. Learned DR placed reliance on the orders of the authorities below and submitted that the orders of the Tribunal are not available with him and he cannot offer any comments on the orders of the earlier assessment years.

9. We have gone through the records in the light of submissions made on either side. On perusal of the orders, we are satisfied that the facts and questions of law involved in these two assessment years on hand are identical to the ones involved for earlier assessment years and by order dated 13.08.2019 in ITA Nos. 2285 and 2392/Del/2016 for assessment year 2011-12, a coordinate Bench observed as follows :

“13. We have carefully considered the rival contention and perused the orders of the lower authorities. Issue involved in this appeal is whether the expenditure incurred by the assessee is allowable u/s 37 (1) of the act or not. Allowability of an expenditure incurred by the assessee u/s 37 (1) of the act is required to be tested in accordance with nature and scale of the business/ profession of the assessee. It may be a case that in case of one assessee, particular expenditure is “ wholly and exclusively” incurred for the purposes of business and in another case it may not be so. Undoubtedly, assessee is a noted international lawyer who has set up a scholarship for creating his visibility in international arena and his social standing. The assessee has specifically submitted that it has increased lot of value of the CV of the assessee and the government of Singapore has appointed him on certain committees of repute. Even otherwise, it is not open to the revenue to adopt a subjective standard of reasonable as and decide whether the type of the expenditure of the assessee should incur and in what circumstances. The opinion of the learned assessing officer that attending the conferences et cetera would have added more weightage to the professional profile of the assessee is devoid of any merit. It is not the AO but the assessee is carrying on the profession. He knows better that what kind of expenditure he should incur for furtherance of his business. To judge allowability of an expenditure, the learned assessing officer should put himself into the shoes of the assessee and then decide that whether the expenditure incurred by the assessee is necessary or not for the business of the assessee. Thus, allowability of expenditure should always be judged from the mindset of the assessee. The AO cannot put his thinking to say that the expenditure incurred by the assessee is not wholly and exclusively incurred for his profession, unless, he brings his level of thinking to the level of the professional, like assessee. The requirement

of incurring the expenditure by a professional/businessman changes by the changes in the dynamics of the business, its complexities and its uniqueness. The level at which the assessee is carrying on the profession, perhaps, he might not have thought it proper to increase visibility by attending the conferences, seminars et cetera. He has different vision of carrying himself in the professional field to increase visibility and social status. He thought fit to set up a scholarship to Indian students in Oxford University. Thus, in the present case definitely there is a nexus between the expenditure incurred by the assessee and the professional services rendered by the assessee. He has also shown that the student to whom the scholarship has been granted has helped him in a famous case of Vodafone represented by him. Therefore, we are of the opinion that the assessee has incurred the above expenditure wholly and exclusively for the purposes of the business. In the professional field there are innovative ways visualized by the professional to make themselves visible in the professional circle and to build their own professional profile for generating higher and value added business. It may be, sponsoring a seminar, becoming knowledge partners, setting up the prizes and awards, creating the competitive award ceremonies, hosting vibrant summits of various states. Therefore, it is apparent that at least in the case of the professionals, the way they promote themselves, is changing very fast and the benefits of such expenditure are huge and wide. Therefore according to us the impugned expenditure incurred by the assessee is a revenue expenditure allowable u/s 37 (1) of the income tax act. We do not subscribe to the view of the learned CIT – A that this expenditure is capital in nature. The expenditure incurred by the assessee is the routine day-to-day expenditure incurred by the assessee for promoting his professional profile. This expenditure cannot be held to be capital expenditure in nature as no fresh new fixed assets are created by paying the scholarship sum. Further merely because in the agreement it is mentioned as an annual gift in the form of scholarship, it does not become a gift. In fact, it is the expenditure incurred by the assessee in furtherance of his business. While the issue arose before the coordinate bench in the case of another professional firm in ITA number 1382/Del/2012 for assessment year 2009 – 10 wherein substantial contribution was made for a building of an association which promotes the study of taxation. The coordinate bench held that such expenditure

incurred by the assessee is wholly and exclusively incurred by the assessee for the purpose of its profession. Revenue carried the matter before the honourable Delhi High Court, which upheld the order of the ITAT in ITA number 50/2014 dated 11/8/2015. The facts of the present case are on the far better footing. Hence, we reverse the order of the lower authorities, and direct the learned assessing officer to delete the above disallowance. In view of this, we allow ground number 1 of the appeal of the assessee and dismiss ground number 1 of the appeal of the learned assessing officer."

10. For the assessment year 2012-13 also in ITA No. 2505/Del/2017, such a view was followed by Tribunal. On the parity of facts of the cases on hand with the facts of earlier years, we are of the considered opinion that the consistent view taken by the Tribunal for earlier assessment years cannot be disturbed. While respectfully following the same, we direct the Assessing Officer to delete the addition.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court immediately on conclusion of hearing in virtual mode on this 24th day of February, 2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 24/02/2021