IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.825/Ahd/2019
Assessment Year : 2014-15

Chirag M. Shah 2, Walkeshwar Society, B/h. C. N. Vidyalaya, Ambawadi, Ahmedabad-380015 PAN : ACXPS7336J	Vs	ITO Ward-4(2)(1), Ahmedabad

J oT / (Appellant)		/ (Respondent)

Assessee by :	Shri Mansih J Shah, A.R. & Shri Jimi Patel, A.R.
Revenue by :	Shri Alpesh Parmar, Sr. DR

Date of Hearing : 04/04/2022
Date of Pronouncement: 03/06/2022

O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the order dated 15.03.2019 passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad relating to the Assessment Year 2014-15.

2. The brief facts of the case is that the assessee is an individual and Chartered Accountant by profession. The assessee filed Income Tax Return on 28.11.2014 declared total income of Rs. 14,31,540/- wherein tax payable worked is Rs. 2,67,246/- which is inclusive of education cess. The assessee claimed credit for TDS of Rs. 2,96,734/- and thereby claiming a refund of Rs. 29,488/-. The return was processed by Deputy Commissioner of Income Tax, Computer Processing Centre, Bangalore CPC Centre,

Bangalore on 10.06.2015 by intimation under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). By this intimation the CPC Centre has gives TDS credit of Rs. 62,721/- only and raised a tax demand of Rs. 2,46,857/-. The grievances of the assessee is that the entire TDS amount of Rs. 2,96,734/- was not duly given credit by the CPC Centre. Aggrieved by this intimation order the assessee filed an rectification application under Section 154 on 03.07.2015 to the jurisdictional AO namely ITO, Ward-4(2)(1) and also e-filed rectification to the CPC Centre Bangalore. The assessee also claimed that the CPC Centre has wrongly charged interest under Section 234A as the assessee has filed the Return of Income well in time within the extended due date period of 30.11.2014. The assessee also claimed the CPC Centre has wrongly charged interest under Section 234B and 234C of the Act. The Deputy Commissioner of Income Tax has passed an order dated 28.09.2016 confirming the same addition made in the intimation and reject the rectification petition filed by the assessee.

3. Aggrieved against this rectification order, the assessee filed an appeal before the Ld. CIT(A)-4, Ahmedabad. The short issue in this case is that the assessee is following cash basis of system of accounting and the assessee has offered the tax of the professional fees income on receipt basis i.e. on cash basis. However, the assessee is client/deductor has made TDS in the earlier years. As the assessee is following the cash basis system of accounting though the TDS is being made in the earlier years the assessee claimed TDS credit in the current year where the

professional fees paid to receive. The claim of the assessee relating to TDS credit is as follows:

Sr. No.	TAN No.	NAME OF THE DEDUCTOR	Total TDS credit claimed in ITR	TDS PERTAINING TO FINANCIAL YEAR	TDS CREDIT NOT GIVEN BY CPC	Credit of TDS given by CPC u/s 143(1)
1.	AHMI00091A	India Gelatine & Chemicls Ltd.	49845	2013-14	49845	
2.	AHMA11243B	Accurpress India Macinery Pvt. Ltd.	14242	2013-14	6742	7500
3.	AHMB04937C	Bisleri Indternatinal Pvt. Ltd.	120	2013-14		120
4.	AHMJ01199C	Jignesh Rajendabhai Shah	2247	2013-14	2247	
5.	AHML00020G	L.G.Doctor Associates Pv.Ltd.	3371	2012-13		3371
6.	AHMM08497G	Madhuraj Industrial Gases Pvt. Ltd.	2247	2013-14		2247
7.	AHMS10096C	Sumangal Glass Pvt.Ltd.	7303	2013-14		7303
8.	AHMT04061B	The India Faramers & Fertiliser Dealers Asso.	3933	2013-14		3933
9.	BRDP01247B	PBM Polytex Ltd.	27500	2013-14		27500
10.	AHM06453G	Ambica Pharma Mchines Pvt.Ltd.	11043	2013-14	11043	
11.	AHMB00776G	Bhagwati Autocast Ltd.	12360	2012-13	12360	
12.	AHMB00986G	Ghafgwati Spherocast Pvt.Ltd.	12360	2012-13	12360	
13.	AHMB03444A	Byte Technosys Pvt.Ltd.	191	2013-14	191	
14.	AHMC00216G	Cama Motors Ltd.	3933	2013-14	3933	
15.	AHMD090246B	Dev Information Technology Pvt.Ltd.	2500	2013-14	2500	
16.	AHMK05907G	Kamdar Carz Pvt.Ltd.	28373	2013-14	28373	
17.	AHMN00340E	N.B.Commercial Enterprises Pvt.Ltd.	2809	2012-13	2809	
18.	AHMN00340E	N.B.Commercial Enterprises Pvt.Ltd.	5618	2013-14	5618	
19.	AHMN00423D	Nirantar Securities Pvt.Ltd.	3594	2013-14	3594	
20.	AHMN03802F	NKP Pharma Pvt.Ltd.	5281	2013-14	5281	
21.	AHM000736B	Office of the D.D.G.V.T.M.Gujarat	529	2013-14	529	
22.	AHMS900508E	Sagar Powertex Pvt.Ltd.	6000	2013-14	6000	
23.	AHMS02391E	Shree Rama Multi Tech Ltd.	2247	2013-14		2247
24.	AHMS15729A	Sumiran Foods Pvt. Ltd.	6350	2013-14	6350	
25.	AHMU00061F	Uniexcel Agencies Pvt.Ltd.	5260	2013-14	5260	
26.	AHMX00027G	Xduce Infotech Pvt.Ltd.	2825	2013-14	2825	
27.	MUMK00345C	Khimji Vishram &Sons (Comm.Dept.)	3231	2013-14	3231	
28.	AHMS00665A	Sayaji Industries Ltd.	8500	2013-14		8500
29.	BRDP01247B	PBM Polytex Ltd.	25281	2011-12	25281	
30.	BRDP01247B	PMB Polytex Ltd.	25281	2012-13	25281	
31.	BRDP01247B	PBM Polytex Ltd.	12360	2013-14	12360	
		Total:-	296734		234013	62721

4. The Ld. CIT(A) partly allowed the assessee's appeal is as follows:

"As per the system employed by the appellant, the expenditure has been booked by their principals in A.Y. 2014-15 but the related payment has not been shown as receipt/turnover in their return of income for A.Y. 2014-15 as the amount has not been received fill 31.03.2014. As unique TDS Certificate number (as per chart above) is not yet issued to the principals therefore not quoted by the appellant in its return of income, hence CPC was not left with any other option as it employs technological driven process in handling millions of returns of income(ROI). Consequently, the system of accounting being employed by the appellant is resulting into lot of inconsistencies/infirmities at the cost of revenue. This issue is elaborated further as under:

i) The TDS credit is sought by the appellant but commensurate income is not being shown in A.Y. 2014-15. In instant case, the TDS deducted in year 2011-2012, 2012-2013, 2013-2014 is being claimed as credit. Consequently, it is almost impossible to verify as to whether the commensurate income has been brought to tax or not.

ii) The principals (TDS deductor) have booked the expenses as the TDS has been deducted, reducing their income returned to pay taxes for A.Y, 2014-15. It is resulting into postponing of tax liability by the deductees (Appellant in this case) as the receipt in full relating to TDS has not been shown in this A.Y. 2014-15. The same argument can be extended to the A.Y. 2012-13 & 2013-14.

iii) As the case may be, it is resulting into unending process of rectifications/litigation/unsettling of accounts in the ledger being maintained electronically for each assesses by the department and neither department nor the assessee is sure of resolving the pending issue at any point in time.

iv) The department trying to become progressive wherein human inter-face is reduced through automatically processing of information through Computer System but appellant(s), as is instant case- are not attuning to the technological driven system. They desire to get things done manually through AO year after year for TDS as per example below ['X' being TDS of 'Y' being income]

TDS Credit sought by the appellant say for five years

Year 0	*Year 1*	*Year 2*	*Year 3*	*Year 4*
X(0)	*X(0)*	*X(0)*	*X(0)*	*X(0)*
	X(1)	*X(1)*	*X(1)*	*X(1)*
		X(2)	*X(2)*	*X(2)*

Therefore, TDS credit being claimed in year 1 but commensurate income may or may not be shown even in next year, it may be partly in year 2 or 3. In other words, the TDS credit say of Year - 0 continue to figure for next 3-4 years depending on the assessee as to when it receives the concerned income. Similar will be the case for Year -1, wherein part TDS credit of Year -1 and Year-0 are claimed. In Year-2, part TDS credit of Year-2, Year- 1 and Year-0 claimed. The issue has compounding complexity and it will be more complex if we go back to Year(-1) and Year (-2), Year-0 being base year say

2014-15. For instance, the credit of TDS deducted in A.Y. 2012-13 is being claimed in A Y. 2014-15.

Therefore AO is also not accepting the reality of situation. AO is not giving credit for TDS of A.Y. (year I) as income is not shown fully in year (Year-1) so part credit is given, say in A.Y. 2015-16, On the other hand, whatever income shown in return of income being accepted though TDS credit of Year-0 (X-0) may have been claimed but not granted, i.e. A Y.2013-14 because of entries in Form 26AS. The appellant has relied on certain case laws and f fully agree that the credit for TDS is required to be given with the comment in the year in which the income/receipt on which such tax deducted at source(TDS) is assessable to tax. Harmonious interpretation of the statue through different judgments is required in such circumstances. Therefore, the stand of the AO is definitely against the interest of the appellant and the argument of Shri Chirag Shah, AR in this regard is well taken.

In the circumstances, a rational system need to be evolved and accepted by both the sides without compromising on their interests white maintaining highest standard of transparency. Therefore, in best of my understanding and appreciation of facts, I decide that the credit for TDS which has been deducted in F.Y. 2013-14 should be granted in A.Y. 2014-15 with the direction that the commensurate income (apparently not fully shown by assessee) should also be brought to tax in A.Y. 2014-15 so as to avoid avoidable aberration in the system. Consequently, each year shall be in harmony without having tax liability postponed or protracted litigation involved as per example as under: ['X' being TDS of 'Y' being income]

Year 0	*Year 1*	*Year 2*	*Year 3*	*Year4*
X0	*X1*	*X2*	*X3*	*X4*
Y0	*Y1*	*Y2*	*Y3*	*Y4*

The TDS credit and the commensurate turnover/income shall be shown in same year wherein the verification is easy and any fraud on revenue can be avoided with definite certainty. This is a stage both the sides nave to reach without doing bickering about each other.

The fact remains that the first appellate authority also doesn't have much of evidences and even if filed have limited mandate to which verification could be done as the preliminary examination of such evidences has not been clone by the assessing officer having natural jurisdiction over the case it is also noted that there is very limited sphere of power with the department u/s. 143(1) to undertake adjustments in the returned income as per provisions of IT Act, 1961 and entries in Form 26AS are important guiding light for any such action. This is a reality which must be accepted by the appellant.

Therefore, I decide to direct the AO to grant credit of any TDS deducted in A. Y. 2014-15 provided the commensurate receipt is also brought to tax in A.Y. 2014-15. Similarly, the credit for TDS deducted in A.Y. 2015-16 should be granted in A.Y. 2015-16 without leaving out any commensurate income for assessment in A.Y. 2016-17. The Form No.26AS would not be causing any

problem to either party provided the deductor has uploaded the correct details in TDS returns. The appellant has to interface with AO only in case certain mistakes crept in because of wrong punching while uploading TDS details by the deductors. The All Gujarat Federation of Tax Consultants vide communication dated 28/04/2017 has urged CBDT to direct the AOs to grant credit for the TDS if the same is reflected in 26AS of tax payer. While concurring with this proposal dated 28.04.2017, it is my opinion that the related bills should also be part of total turnover for the related assessment year. The TDS and the income has to go hand in hand. Therefore, while adjudicating ground no. 1 & 2 of this appeal, I direct the AO to give TDS credit in A.Y.2014-15 for the deductions made in F.Y. 2013-14 by ensuring that the total commensurate amount is brought to tax in A.Y. 2014-15 itself. It is my conscious decision not to accede to the demand of appellant for allowing TDS credit pertaining to A Y.2012-13 & A.Y.2013-14. The ground no. 1 & 2 are accordingly disposed off with the direction to AO to issue revised demand notice. The ground no.1& 2 are partly allowed."

5. Aggrieved against the same the assessee before us raising the following grounds of appeals:

"1. To direct Ld.A.O./ Hon'ble CIT(Appeals) to pass the necessary Rectification Order u/s. 154 of the I.Tax Act and to allow claim of Refund of Tax, as claimed as per ITR filed.

2. To issue necessary directions to grant credit of TDS of Rs. 78,653/- pertaining to A.Y. 2012-13 & 2013-14 (out of Total Claim of TDS of Rs. 2,96,734) for which your Appellant has offered Income on <u>cash basis</u> in A.Y. 2014-15.

3. The Ld. CIT(A) erred in directing the Ld.A.O to grant TDS of F.Y. 2013-14 relevant to A.Y.2014-15 only being Rs.2,18,081/-.

4. The learned CIT(A) has erred in law and on facts in confirming the action of Ld.AO by not granting credit of TDS of Rs. 78,653/- pertaining to A.Y.2012-13 & 2013-14 in the Appellant order passed by CIT(A) dt. 15/03/2019.

5. Your Appellant requests your honour to grant necessary directions to appropriate authorities to grant further credit of TDS of Rs. 78,653/- pertaining to A.Y.2012-13 & 2013-14 of which for both the years the income is offered for taxation for the year under consideration.

6. Both the lower authorities have erred in law and on facts in passing the orders without properly appreciating the fact and erred by ignoring various submissions and explanations submitted by your appellant from time to time which ought to have been considered before passing the impugned order. This action of both the authorities have not adhered to the principles of Natural Justice and therefore full relief is to be granted to your Appellant for claim of TDS.

7. Therefore it is submitted by your Appellant that full relief of claim of TDS be allowed."

6. Reiterating the grounds of appeal the Ld. Counsel appearing for the assessee submitted that an appropriate TDS credit should be given to the assessee and proper rectification order is to be passed.

7. Per contra, the Ld. DR appearing for the Revenue supported orders passed by the lower authorities and also pointed out the assessee is only asking for the TDS credit whereas the corresponding income is not offered for the A.Y. 2014-15. Therefore, the Ld. CIT(A) is correcting the denying the benefit to the assessee.

8. We have given our careful consideration and perused the material available on record. This issue of the TDS credit is no more res integra, since this issue is been settled by Jurisdictional High Court in the case of Naresh Bhavani Shah (HUF) vs. CIT, reported in (2017) 396 ITR 589 (Guj.). For better understanding, the judgment of the Hon'ble Jurisdictional High Court in the case of Naresh Bhavani Shah (HUF)(supra) is reproduced hereunder:

> *"6. As is well known, Chapter XVIIB of the Act pertains to tax deduction at source. This part contains detailed provisions for collection of tax at source and depositing with the government revenue and other related provisions. We may refer to the relevant provisions contained thereunder. Section 199 pertains to credit for tax deducted. Relevant portion thereof reads as under:*
>
> > *"(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*
> > *(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given."*

7. Under sub-section (1) of Section 200 any person deducting tax at source would pay within the prescribed time the said sum to the credit of the Central Government under sub-section (3) of Section 200 such person would file periodic statements of tax deducted at source. Sub-section (1) of Section 203 requires every person deducting tax at source to issue certificate to the deductee within the prescribed time. Section 206AA carries the title Requirement to furnish Permanent Account Number. Various sub-sections contained therein provide for supplying PAN by the deductee failing which tax will be collected at a higher rate. In case of invalid or not matching PAN also, similar circumstances would follow.

8. It can thus be seen that the Act contains detailed provision for collecting tax at source, depositing such tax with the government revenue and issuance of certificates to the deductee of such tax so deducted. The anxiety of the department, therefore, to ensure the credit of tax deducted at source is given to the rightful person in consonance with the certificate of TDS can easily be appreciated when large number of such transactions in any accounting year are likely to take place. The most dependable identification of the deductee would be his PAN which would be a unique identification number so far as an individual or an entity is concerned. The anxiety of the department therefore to ensure proper matching of the PAN in the TDS certificate as compared to the PAN of the assessee who claims the benefit of such tax deducted at source, therefore, cannot be lightly brushed aside. The short question is, In a genuine case like the case on hand, is the person remedyless?

9. It is in this context, the provision of Section 199 would come into play. As per sub-section (1) of Section 199 any deduction of tax at source would be treated as payment of tax on behalf of the person from whose income the deduction was made or the owner of the security or of the depositor or of the owner of the property or unit holder or the share holder as the case may be. Sub-section (3) of Section 199 however permits a deviation authorizing the power to make rules in respect of giving credit of tax deducted at source or the year during which the credit of such tax deducted at source should be granted. In exercise of such powers, Rule 37BA of the Income Tax Rules 1962 has been framed, relevant portion of which reads as under:

"37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

(2) (i) <u>If the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where---</u>

(a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;

(b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;

(c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;
(d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset :

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).

(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody."

10. It can thus be seen that under sub-rule 2 of Rule 37BA where whole or part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person and not to the deductee provided the three conditions contained therein are satisfied. These conditions in brief are that the deductee files a declaration with the deductor in this respect, such declaration would contain the details of the person entitled to the credit and the reasons for giving such credit and lastly the deductor issues certificate for deducting tax at source in the name of such a person. In the present case, the petitioner could have applied to RBI in terms of sub- rule 2 of Rule 37BA and completed the procedure envisaged therein. However, one can gather that there is no dearth of power with the department to grant credit of tax deducted at source in such a genuine case. We are not suggesting that the requirements of sub-rule 2 are not to be followed before such benefit can be granted. Invariably in all cases such procedure would have to be completed before a person can rightfully claim credit of tax deducted at source where the TDS certificate shows the name and PAN of some other person.

11. In the present case, however, many years have passed since the event arose. The facts are not seriously in dispute. The HUF has already offered the entire income to tax. The department has also accepted such declaration and taxed the HUF. In view of such special facts and circumstances, we direct the department to give credit of the said sum of Rs.5,42,800/- to the petitioner HUF deducted by way of tax at source upon Shri Naresh Bhavanji Shah filing an affidavit before the department that the sum invested by the RBI does not belong to him, the income is also not his and that he has not

claimed any credit of the tax deducted at source on such income for the said assessment year."

9. On going through this judgement, it is crystal clear that there are provisions of under the IT Act; namely, section 199 of the IT Act, 1961 and Rule 37BA of the IT Rules, 1962 and proper mechanism is also provided under the Act and Rules. Thus, respectfully following the ratio of the Jurisdictional High Court judgement, the assessee is entitled to get credit on TDS of Rs.2,96,734/-. Hence, this ground of appeal raised by the assessee is allowed by setting-aside the orders passed by lower authorities and direct the DCIT, CPC to pass fresh orders giving proper opportunities to the assessee and in accordance with law within a period of 12 weeks from the date of receipt of this order.

10. As far as ground Nos.3 to 6 of appeal are concerned, the same are charging of interest u/s.234B & 234C of the Act, which are consequential in nature and, hence, no separate adjudication is required. Thus, these grounds of appeal raised by the assessee are allowed for statistical purpose.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Court on 03rd June, 2022 at Ahmedabad.

Sd/-	Sd/-
(ANNAPURNA GUPTA)	(T.R. SENTHIL KUMAR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Ahmedabad, dated 03/06/2022

Tanmay *TRUE COPY*

/Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.

3. Concerned CIT
4 The CIT(A)-
5. DR,ITAT, Ahmedabad,
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Ahmedabad