

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.811/Bang/2016
(Assessment year: 2009-10)

Shri Dev Prakash Gupta,
No.5 & 6, Milia Building,
N.R.Road,
Bengaluru-560002.
PAN:ACQPG 1933 Q

... Appellant

Vs.

Income-tax Officer,
Ward 1(4),
Bengaluru.

... Respondent

Appellant by : Shri Balaram R Rao, Advocate.
Respondent by : Shri Nambirajan, Addl.CIT(DR)

Date of hearing : 25/09/2017
Date of pronouncement : 28/09/2017

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the Commissioner of Income-tax (Appeals)-5, Bangalore, ['CIT(A) for short'] dated 16/05/2016 for the assessment year 2009-10.

2. The assessee raised the following the grounds of appeal and additional grounds:

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1. On the facts and circumstances of the case the Ld CIT (A) erred in upholding the order passed by the assessing officer under section 143 (3) rws 147 of the Income Tax Act, 1961.
2. The Ld CIT appeals erred in upholding the disallowance of TDS credit amounting to Rs. 768,300/-.
3. The Ld CIT appeals failed to appreciate the fact that the issue was covered by the judgement of the Honourable High Court of Karnataka reported in 278 ITR 206 (KAR) in the case of Smt. Anusuya Alva vs. Depty.Commissioner of Income Tax & Ors.
4. The Ld CIT appeals erred in upholding the levy of interest under section 234 A, 230 4B, 230 4C of the Income Tax Act.
5. For that the appellant craves leave to add, amend or withdraw the foregoing grounds of appeal.

3. Briefly facts of the case are that the assessee is an individual. Return of income for the assessment year 2009-10 was filed disclosing income of Rs.33,86,800-. It was stated that the assessee also made a claim for credit of TDS of Rs.7,68,300/- on rental income received from M/s.Innovative Studios (P) Ltd.. Against said return of income, the Assessing Officer passed assessment order u/s 143(3) r.w.s. 147 vide order dated 22/09/2005 without granting credit for TDS claim of Rs.7,68,300/-.

4. Being aggrieved, an appeal was preferred before the CIT(A), who vide impugned order, dismissed the appeal on the ground that there was no evidence brought on record to show that M/s.Innovative Studios (P)Ltd. had actually deducted tax at

source nor Form No.16 issued by the deductor was filed during the course of hearing.

5. Being aggrieved, assessee is in appeal before us in the present appeal. Learned counsel for assessee vehemently contended that as per letter issued by M/s.Innovative Studios (P) Ltd., tax was deducted at the rate of Rs.68,500/- p.m. and drawn our attention to pages 1 to 8 of the paper book wherein copies of letters issued by the said party showing deduction of tax at source at the rate of 16.995% on monthly rental income of Rs.4,03,200/- was shown. Therefore, it is claimed that as per the ratio laid down by the Hon'ble jurisdictional High Court in the case of *Smt.Anusuya Alva vs. DCIT (278 ITR 206)(Kar)*, credit should be allowed to the assessee and recovery of tax from the assessee should not be enforced for default of deductor to remit the amount to the account of the Central Government.

On the other hand, learned Departmental Representative vehemently argued that in absence of any evidence for deduction of tax at source, credit cannot be given. He placed reliance on the orders of the lower authorities.

6. We heard rival submissions and perused the material on record. The only issue in the present appeal is whether the AO was justified in denying credit for TDS amount of Rs.7,68,300/-. No doubt, there was no evidence of TDS made from the assessee either in the form of challan or Form No.16 issued by the

deductor. The whole claim was made based on communication letters issued by the deductor i.e. M/s.Innovative Studios (P) Ltd. The Hon'ble jurisdictional High Court in the case of *Smt.Anusuya* (supra) laid down that in cases where tax was deducted and deductor failed to remit the amount to Central Government, credit to the assessee shall not be denied and the revenue is supposed to recover the amount only from the payer of the amount i.e. the deductor and the revenue is stopped from enforcing the demand from the recipient of income. But in the present case, there was no evidence of deducting amount except letters issued by the payer of the amount. In the circumstances, we remand this issue back to the file of the AO to verify whether tax was actually deducted by the payer i.e. M/s.Innovative Studios (P) Ltd and if so, grant credit for the same in the hands of the assessee.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28th September, 2017

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Place : Bengaluru.

D a t e d : 28/09/2017.

srinivasulu, sps

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore