

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 7081/MUM/2013  
Assessment Year: 2005-06**

Alia Creative Consultants  
Pvt. Ltd.107, Jehanagir  
Vila, Nathalal Parekh  
Marg, Colaba, Mumbai-  
400005

DCIT-3(1)  
Vs. Mumbai.

**PAN No. AABCA2766R  
(Appellant)**

**(Respondent)**

Assessee by : Mr. Sanjiv M. Shah, AR  
Revenue by : Mr. Rajesh Kumar Yadav, DR

Date of Hearing : 27/09/2017  
Date of pronouncement : 24/11/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2005-06. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-5, Mumbai and arises out of the order u/s 154 of the Income Tax Act 1961, (the 'Act').

2. The 1<sup>st</sup> ground raised by the assessee is this appeal is that the Ld. CIT(A) erred in not granting the TDS credit of Rs.6,05,331/- in the assessment year 2005-06.

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) made the assessment u/s 143(3) on 30.08.2007 determining the total income of the assessee-company at Rs.1,53,92,440/-. The

assessee filed an application before the AO on 25.04.2011 stating that it had made a TDS claim of Rs.34,42,620/- in the return of income.

After verification on the representation of the assessee, the AO gave credit of TDS amounting to Rs.28,37,289/- (Rs.34,42,620/- minus Rs.6,05,331/-) u/s 154.

As regards TDS credit of Rs.6,05,331/-, the assessee has sought credit for the same for AY 2005-06 although the TDS was deducted in the subsequent year, on the ground that corresponding income had been offered in AY 2005-06. This claim of the assessee was not accepted by the AO, as the credit for TDS cannot be granted prior to the period when it was actually deposited with the Government. The AO held that the same has to be claimed in AY 2006-07 only.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) has held that (i) this is a case where TDS has been made and deposited in the government account in the year relevant to the AY 2006-07, (ii) the assessee has accounted for the receipts on its invoice based on the mercantile system of accounting, whereas the deductor has made TDS at the time of either crediting or paying the amount in the next year (i.e. after 31.03.2005), (iii) as per the existing instructions, the credit for TDS claim could be given only when the deductor pays it to the government account.

The Ld. CIT(A) has also held that the assessee can move the AO for getting the credit in AY 2006-07 by way of application u/s 154.

5. Before us, the Ld. counsel of the assessee submits that the assessee-company follows mercantile system of accounting and it has rightly offered the income and TDS credit in the AY 2005-06 which has

been accepted in the assessment order made u/s 143(3). Thus it is stated by him that credit for TDS ought to have been given in the AY 2005-06. Reliance was placed by him on the decision in the case of *LML Ltd. vs. M.K. Venkataraman* (2006) 285 ITR 282 (Bom).

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. In the case of *LML Ltd.* (supra), the fact is tax deducted at source not paid to central government before date of filing of return but paid before assessee's return was processed. Credit was given in intimation u/s 143(1)(a). The Hon'ble High Court held the rectification proceedings to withdraw credit and adjustment of consequent demand against refund due for next year as not valid. It also held that additional tax on the basis of disallowance not taken into account in computing total income as not valid.

This is not so in the instant appeal.

We now refer to the decisions pertinent to the present issue. In the case of *CIT vs. Tanjore Permanent Bank Ltd.* (1984) 149 ITR 788 (Mad), the Hon'ble High Court observed that "it is well established that a tax credit can be given only in cases where the tax is paid on the income in respect of which deduction has been made at source."

In *CIT vs. H. Krishna Vijoy Arora* (2012) 20 taxmann.com 655 (Ker), the Hon'ble High Court observed that "credit of tax based on TDS certificates issued by bank in respect of interest income, which has not been assessed in assessment of assessee, should be allowed in year in which subject matter of deduction of tax is assessed."

In *CIT vs. Smt. Pushpa Vijoy* (2012) 19 taxmann.com 157 (Ker), it is held that the assessee is entitled to credit of tax based on TDS certificate only in assessment years in which income from which tax is deducted is assessed.

In view of the above, the AO is directed to allow credit of tax based on TDS certificate only in assessment year in which income from which tax is deducted is assessed.

8. In the result, the 1<sup>st</sup> ground of appeal is allowed for statistical purposes.

9. The 2<sup>nd</sup> ground raised by the assessee in this appeal is that the AO erred in levying interest u/s 234B of Rs.2,61,372/-; u/s 234C of Rs.26,612/- and u/s 220(2) of Rs.5,63,363/- aggregating to Rs.8,57,347/-.

The levy of interest is mandatory though consequential. We order accordingly.

10. In the result, the appeal is partly allowed.

**Order pronounced in the open Court on 24/11/2017.**

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/11/2017

*Rahul Sharma. Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**