IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 1512/MUM/2016
Assessment Year: 2011-12

Imago Screens India Pvt. Ltd. (now Lumaran Technologies Pvt. Ltd.) C/0 Kalyaniwalla & Mistry LLP, Esplanade House, 29, Hazarimal Somani Marg, Fort, Mumbai-400001. **PAN No. AACCI0068B**	Vs.	Income Tax Officer-5(2)(1), Mumbai Room No. 525, 5th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant		**Respondent**

Assessee by : Mr. Zareer N. Mehta, AR
Revenue by : Mr. Saurabhkumar Rai, DR

Date of Hearing : 16/05/2018
Date of pronouncement : 31/05/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-10, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. The Ld. CIT(A) erred in directing the Assessing Officer to grant full credit for TDS of Rs.13,54,895/-.
2. The Ld. CIT(A) erred in directing the Assessing Officer to grant credit for TDS pro-rata only to the extent of Rs.8,47,410/-.

3. Having regards to the facts and circumstances of the case the Assessing Officer be directed to grant further credit for TDS Rs.5,07,485/-.

3. Briefly stated, the facts of the case are that in the original return of income filed on 30.09.2011, the assessee had claimed TDS credit of Rs.2,44,825/-. In the revised return of income filed on 08.05.2012, the assessee claimed TDS credit of Rs.13,54,895/-. The AO noted that the TDS certificate and the income pertaining it does not belong to the assessee. The income appearing in the books of the assessee is on account of sale of VMS panels to ENSO Secutrack Ltd. (ENSO) and L&T Ltd., on which no tax is deductable at source. The TDS reflected in form 26AS of the assessee is actually the tax deducted at source by Karnataka Road Development Corporation Ltd. (KRDCL) on payments made to ENSO for whom the assessee was merely a collecting agent. Therefore, with the above observations the AO did not agree with the contention of the assessee to allow its TDS claim either entirely or pro-rata basis and therefore, denied the credit for TDS claim of Rs.13,54,895/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) held :

> "It is evident from the above facts that ENSO has not made any claim of TDS of Rs.13,54,895/- deducted by KSRDCL on the bill's raised by It. As ENSO could not fulfil its commitment, a part of the contract was performed by the appellant company to the extent of Rs.4,23,70,527/- (19 VMC machines) and rightfully accounted the same in its books. As ENSO has not claimed TDS credit and TDS has already been made and remitted to the exchequer, credit should be given somewhere. In the particular circumstances of this case as the appellant has accounted for Rs.4,23,70,527/- out of Rs.6,77,44,803/- to which TDS pertains to, as requested in the alternate

ground, it is appropriate to give credit in the hands of the appellant on pro-rata basis on the amount actually accounted by it. I accordingly direct the AO to verify the certificates and rework the TDS on pro-rata basis and allow credit in the hands of the appellant."

5. Before us, the Ld. counsel of the assessee submits that during the year under consideration, the appellant had claimed credit of TDS in its revised return of income amounting to Rs.13,54,895/- in respect of tax deducted at source by KRDCL. It is stated that ENSO was awarded a project by KRDCL for supply and installation of 'Variable Messaging Sign Boards' (VMS) across Bangalore Highway as per contract dated 02.03.2009.

ODECO Electronica S.A., Spain, (ODECO) one of the shareholders of the assesses company had agreed to supply 20 VMS to ENSO for onward supply to KRDCL in Bangalore.

After the delivery of the first VMS unit, in view of the precarious financial position of ENSO, ODECO requested the Company to import, assemble and deliver the balance Boards to ENSO. In order to secure the Company for its payments, ENSO agreed to permit the Company under a Specific Power of Attorney dated 18.11.2009 to receive all payments, in the capacity of a Collecting Agent that became due and payable by KRDCL to ENSO under she contract. The Company was required to remit to ENSO only the balance amount under the contract, after adjusting its own dues.

During the course of the project, ENSO raised bills on KRDCL amounting to Rs.6,77,44,803/-. As KRDCL has made the payments to the assesses company, they have deducted the tax under the assessee's

PAN instead of ENSO and issued the TDS certificate in the name of imago.

The assesses company has by way of journal entries, credited the entire TDS of Rs.13.54,895/-in the ledger account of ENSO for the year ended March 31, 2011, whereby reducing the amount recoverable from them. The copy of the ledger account of ENSO was filed.

Further, as ENSO could not fulfil its obligation towards the KRDCL Project, they requested the assesses to fund the expenses on their behalf which would be recovered by them from the payments collected from KRDCL. It is only for this reason that the assessee has claimed the TDS even though the income has not been offered for lax.

It is submitted that such TDS has not been claimed by ENSO. Also it is stated that once tax at source has been paid into Government Treasury, the revenue authorities should grant credit to the holder of the TDS certificate. If this is not done, then possibly no one will receive credit for the tax already paid into Treasury.

5.1 The Ld. counsel relies on the decision in *Escorts Ltd. v. DCIT* (2007) 15 SOT 368 (Delhi), *CIT v. Relcom* (2015) 62 taxmann.com 190 (Delhi), *Supreme Renewable Energy Ltd. v. ITO* (2010) 3 ITR (Trib) 339 (Chennai) and *CIT v. Bhooratnam & Co*. (2013) 357 ITR 396 (AP).

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A) stating that ENSO has not made any claim of TDS of Rs.13,54,895/- deducted by KSRDCL on the bill's raised by it. As ENSO could not fulfil its commitment, a part of the contract was performed by the appellant-company to the extent of Rs.4,23,70,527/- (19 VMC machines) and rightly accounted the same in its books. The Ld. DR

supports the order of the Ld. CIT(A) stating that right direction has been given to the AO to verify the certificates and rework the TDS on pro-rata basis and allow credit in hands of the appellant.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

We discuss now the decisions relied on by the Ld. counsel of the assessee. In *Escorts Ltd*. (supra), it is held that (i) once tax is deducted on income credited by the assessee in its books of accounts and a requisite certificate to this effect is issued by the deductors after deposit of tax amount in Government Treasury, assessee becomes entitled to credit of such TDS while computing tax liability of relevant period, (ii) credit for TDS must in every case be given to assessee from whom income-tax was deducted at source and paid to credit of Central Government, (iii) if recipient of income considers that he is not liable to tax in respect of income, wholly or partly and, therefore, does not disclose amount of such income in his return, Income Tax Department cannot refuse to give credit merely by contending that income had not been disclosed in return filed by assessee for the assessment year.

In *Relcom* (supra), the assessee derived income from business of erection, commissioning and installation of towers on contract basis. The AO noticed that the total receipts declared by the assessee were less than the amount on which TDS credit was claimed. The assessee explained that the discrepancy arose because vendor had billed assessee's sister company REPL for the work but had mistakenly mentioned assessee's PAN in the TDS certificate and, thus, inadvertently crediting assessee's TDS account in the 26AS statement, which was PAN based. The assessee had claimed credit of all TDS

certificates, including that related to REPL stating that the benefit of the TDS certificates mistakenly issued in assessee's PAN name had not been availed by REPL. The AO rejected the assessee's claim relying on section 199 and held that the TDS credit should be allowed to the person from whose name the deduction was made. According to the AO, the assessee, instead of claiming the credit of the TDS which did not belong to it, should have approached the vendors for correction of their record. Thus the AO held that the TDS could be claimed only against the amount related to the assessee. On appeal, the Ld. CIT(A) allowed assessee's claim on the ground that since the assessee had already paid the due taxes in REPL, it would be travesty of justice to not allow the benefit of TDS to the assessee. The Tribunal upheld the order of the Ld. CIT(A). On further appeal, the Hon'ble High Court held that (i) the revenue having assessed REPL's income in respect of such TDS claim, which it has not availed, cannot deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, giving that the assessee and REPL are sister concerns and REPL has not raised any objection with regard to the assessee's claim, (ii) the revenue's contention that the assessee, instead of claiming the entire TDS amount, ought to have sought a correction of the vendor's mistake, would unnecessarily prolong the entire process of seeking refund based on TDS credit.

In *Supreme Renewable Energy Ltd*. (supra), the assessee-company was engaged in the business of co-generation of power. The assessee earned interest during the previous year relevant to the AY 2003-04 from deposits kept with banks which had been lodged with IREDA. Tax had been deducted at source on the interest. The assessee worked out its tax liability and after adjusting a portion of the tax

deducted at source towards this income it had claimed a refund. The AO did not give credit to the tax deducted at source since the assessee had not offered the interest income for tax and raised demand inclusive of interest charged u/s 234B and 234C of the Act. The CIT(A) dismissed the assessee's plea. On further appeal, the Tribunal held that when a particular income is received by the assessee after deduction of tax at source and the tax deducted at source has been duly deposited with the Government and the assessee has received the requisite certificate to this effect, then on production of the certificate the assessee becomes entitled to credit for tax deducted at source even if the assessee has not directly offered the said income for tax considering it not liable to tax. The interest on deposit earned by the assessee was mandatory as required by the statute. Therefore, the interest income earned on the deposit was not out of surplus funds of the assessee but due to the statutory requirement under which the deposit was made for availing of the credit facility for installation of asset. It was directly incidental to the acquisition in respect of the machinery and had been rightly reduced from the cost of the machinery. In this way the assessee had indirectly disclosed the income and offered it for assessment. Even if the income earned by the assessee had not been offered for tax being not liable to tax, the assessee was entitled to credit of the tax deducted at source made in respect of that income. Thus the assessee was entitled to credit of tax deducted at source relating to interest income and consequently, the interest levied u/s 234B and 234C was not justified.

In *Bhooratnam & Co*. (supra), the assessee-firm was converted into a company w.e.f. July 16, 2003, and all the assets and liabilities of the erstwhile firm became the assets and liabilities of the assessee-

company. It entered into a joint venture agreement for the purpose of preparing and submitting a tender. Contract receipts up to July 15, 2003 were offered for taxation in the hands of the firm and after July 15, 2003, receipts from all existing works or contracts on hand were declared in the hands of the company. Even though tax was deducted at source, the AO for the AY 2004-05, refused to give credit on the ground that some of the certificates of tax deduction at source belonged to the joint venture and some other certificates were in the name of directors and did not relate to the assessee-firm/company. The CIT(A) held that the assessee was entitled to the credit for tax deducted at source. The Tribunal relying on Rule 37BA of the Income Tax Rules 1962, held that the AO was required to give credit for the tax deducted at source in terms of the certificates filed by the assessee-company either in the name of the assessee or in the name of the director. It accepted the contention of the assessee that income included in the certificates of tax deducted at source had been considered for the purpose of determining the total income of the assessee and that on the same logic, due credit should also be given for the tax deducted at source involved in those certificates. In appeal, The Hon'ble High Court held that the assessee was entitled to the credit for the tax deducted at source mentioned in the certificates issued by the contractor, whether the certificate was issued in the name of the joint venture or in the name of a director of the assessee-company. They had considered the terms of the agreement dated March 12, 2003, among the parties to the joint venture and held that credit for tax deducted at source could not be denied to the assessee while assessing the contract receipts mentioned in the certificates as income of the assessee. The income shown in the certificates of tax deduction at

source had either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venture. As the joint venture had not filed return and claimed the credit for tax deducted at source in terms of the certificates and the certificates of tax deduction at source had not been doubted, credit had to be granted to the assessee for the tax deducted at source mentioned therein.

7.1 In the instant case, as per the individual transaction statement (26AS details), the amount paid/credited of Rs.6,77,44,803/- appear in the name of the appellant. The corresponding TDS of Rs.13,54,875/- also appear in the name of the appellant in 26AS details. During the course of the project, ENSO raised bills on KRDCL amounting to Rs.6,77,44,803/-. As KRDCL has made the payments to the assessee-company, they have deducted the tax under the assessee's PAN instead of ENSO and issued the TDS certificates in the name of the appellant.

We find that the ratio laid down in the decisions narrated at para 7 hereinbefore squarely applies to the instant case. Following the same, we set aside the order of the Ld. CIT(A) and direct the AO to grant full credit of TDS of Rs.13,54,895/-.

8. In the result, the appeal is allowed.

Order pronounced in the open Court on 31/05/2018.

Sd/-	Sd/-
(SAKTIJIT DEY)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 31/05/2018
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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai