

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A-SMC' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 274/DEL/2017
[Assessment Year: 2013-14]**

Shri Sat Prakash Rana
House No. 823, Village Bijwasan
New Delhi

Vs.

The A.C.I.T
Circle 44(1)
New Delhi

PAN : ADZPR 3989 H

[Appellant]

[Respondent]

**Date of Hearing : 28.08.2018
Date of Pronouncement : 30.08.2018**

Assessee by : Shri B.L. Gupta, Adv
Revenue by : Shri D.S. Rawat, Sr.DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals]-15, New Delhi dated 25.11.2016 pertaining to assessment year 2013-14.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in not allowing credit of TDS of Rs. 4,62,231/- and further erred in restricting the credit of TDS to Rs. 1,82,231/-.

3. The facts of the case, as emanating from the orders of the authorities below show that the assessee has received rental income of Rs. 46,22,310/- from M/s Reebok India on which total TDS was Rs. 4,62,231/-. The Assessing Officer noticed that the assessee has distributed the rental income to three other persons and has only shown a receipt of Rs. 18,22,310/-. The Assessing Officer was of the opinion that since the assessee has shown income only to the extent of Rs. 18,22,310/-, he is entitled for tax credit of Rs. 1,82,310/- only, The Assessing Officer accordingly, restricted the credit of TDS to Rs. 1,82,310/-. The assessee assailed the assessment before the ld. CIT(A) but without any success.

4. Before us, the ld. counsel for the assessee vehemently stated that there is no dispute that as per Form No. 26AS, the total TDS done by Reebok was Rs. 4,62,231/-. It is the

say of the ld. counsel for the assessee that though the rental income was shared with three other persons, but the fact of the matter is that the TDS of Rs. 4,62,231/- was only claimed by the assessee. The ld. counsel for the assessee emphatically stated that the other three persons did not claim any credit and this can be taken as a statement at bar.

5. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. Sub Rule (1) and (4) of the Rule 37BA of the Rules are related to the case of the assessee. The first limb of the said subsection refers to the tax deducted and paid to the Central Government. The second limb of the sub section refers to allowing of credit of the tax so deducted and paid to central government, in the hands the person from whose income, the tax has been deducted. So, a plain and literal interpretation of sub section (1) of [section 199](#) leads to result that the credit of the tax deducted has to be given in the hands of the deductee i.e. the person from whose income the deduction was made. Thus, said sub section nowhere says that credit of TDS should be restricted only to the amount of income or receipt offered in the return of Income or in the Profit and Loss Account. Further, sub rule (1) of rule 37BA of the Rules

also emphasize to allow the credit in the hands of deductor on the basis of the information related to deduction of tax furnished by the deductor. With effect from 1.4.2008, the [section 199](#) of the Act has undergone a change and the requirement of TDS certificate for tax credit has been dispensed with and now the credit is being allowed as per Rule 37BA(4) of the Rules on the basis of information available in the Income Tax Statement (ITS) of the assessee on the data base of Income Tax Department or on the basis of form no. 26AS of Income Tax forms. In the case of the assessee the information as to the income and the tax deducted was available in the ITS. The Assessing Officer has accepted the diversion of income in the hands of Smt. Shyam Kaur, Smt. Krishna and Shri Om Prakash but denied credit of total tax deducted by the deductor. As per the statement made by the Id. counsel for the assessee, no credit of TDS has been given to the other three persons. We are of the view that neither party should be unjust enriched at the cost of the other. Therefore, the credit of Rs. 462310/- is allowable in the hands of the assessee in view of the clear provisions of sub-section 194 of the Act and rules made thereunder.

6. In the result, the appeal filed by the assessee in ITA No. 274/DEL/2017 is allowed.

The order is pronounced in the open court on 30.08.2018.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 30th August, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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