

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICAL MEMBER**

**ITA No.2901(Bang)/2018  
(Assessment Year : 2017-18)**

Shri Vivek Shankar,  
No.119, 28<sup>th</sup> Cross, 12<sup>th</sup> Main,  
BSK II Stage,  
Bangalore-560 070  
PAN No.ATOPS1388Q

Appellant

**Vs**

The Deputy Commissioner of Income tax,  
CPC, Bangalore

Respondent

**And**

**ITA No.2902(Bang)/2018  
(Assessment Year : 2017-18)**

Shri Vikram Shankar,  
No.119, 28<sup>th</sup> Cross, 12<sup>th</sup> Main,  
BSK II Stage,  
Bangalore-560 070  
PAN No.EDHPS30621

Appellant

**Vs**

The Deputy Commissioner of Income tax,  
CPC, Bangalore

Respondent

**Appellant by : Shri J.V.Kodhandapani, CA  
Revenue by : Shri R.N.Siddppaji, Addl.CIT**

**Date of hearing : 17-06-2019  
Date of pronouncement : 28-06-2019**

**ORDER**

**PER B.R.BASKARAN, ACCOUNANT MEMBER**

Both these appeals filed by the respective assesseees are directed against the orders passed by the learned (CIT(A)-12, Bangalore and they relate to assessment year 2017-18. Since the issues contested in

this appeal are identical in nature, they were heard together and are being disposed of by this common order for the sake of convenience.

2. The facts relating to the case are stated in brief. Both the assesseees are brothers. They, along with their mother, were co-owners of an immovable property. All the three persons sold the same during the year under consideration for a sum of Rs. 9.00 Crores. The share of each of the persons was Rs.3.00 Crores. The buyer of the property deducted tax at source u/s 194IA of the IT Act, 1961 from the sale consideration. However, the buyer remitted the entire TDS amount in the name of mother of assesseees herein, being one of the co-owners. In view of the above, the share of TDS amount of the assesseees' herein was not reflected in the Form No.26AS.

3. In the return of income filed by the assesseees herein, they claimed their share of TDS at Rs.3.00 lakhs each. Since it was not reflected in their Form 26AS, while processing the return of income u/s 143(1), the said amount was not given credit.

4. Both the assesseees carried the matter in appeal filed by them before the ld. CIT(A). By placing reliance on Rule 37BA of I T Rules, both the assesseees claimed that their share of TDS should be allowed credit in their respective hands. They also took support of sec.199 of the IT Act, 1961, since they have offered their share of income from long term capital gains. The ld. CIT(A) however, took the view that the credit for their share of TDS can be given only if the TDS statements are rectified. Accordingly, the ld. CIT(A) rejected the appeals of these assesseees. Aggrieved, both the assesseees are in appeal before us.

5. The ld. AR submitted that the capital gains arising on sale of immovable property has been offered by both the assesseees and their mother equally i.e 1/3<sup>rd</sup> each. He submitted that the buyer has committed an error in remitting the entire amount of TDS in the name of mother of the assesseees' herein. He submitted that the mother of the assesseees has claimed credit for her share of TDS only i.e.Rs.3.00 lakhs only. Accordingly he submitted that the remaining amount of Rs.6.00 lakhs belong to the assesseees' herein and the same has not been given credit in anybody's hand. Accordingly he submitted, considering peculiar facts of the case, both these assesseees' share of TDS aggregating to Rs.6.00 lakhs should be allowed credit in their respective hands @ Rs.3.00 lakhs each, even though their Form 26AS does not reflect the TDS amount. The ld. AR also submitted that the claims of assesseees are supported by Rule 37BA of the IT Act, 1961.

6. The ld. DR submitted that the provisions of Rule 37BA prescribe a procedure for claiming credit of TDS. However, the assesseees herein have not followed the same. Hence the Ld CIT(A) has expressed the view that the TDS statements should be corrected first and then only credit can be given in the hands of the assesseees.

7. We have heard the parties and perused the record. There is no dispute that the property was owned by three persons namely, both the assesseees herein and their mother. The long term capital gains arising on sale of property have been offered by each of the above said three persons equally. Normally, the TDS should have been deducted and remitted by the buyer on property equally in the name of the above said

three persons, in which case, the same would have been reflected in Form 26AS. However, it is stated that the buyer has remitted the entire TDS amount in the name of the mother of the assessee herein.

8. The provisions of sec.199 states that the TDS amount shall be treated as a payment of tax on behalf of the person from whose income the deduction was made. Admittedly, the TDS amount of Rs.9.00 lakhs was deducted by the buyer of property from the income of all the three co-owners and hence, in terms of sec.199 of the Act, each of the co-owner shall be entitled for TDS credit of Rs.3.00 lakhs each. However, it is stated that the buyer, though deducted the TDS from the income of all the three persons, has remitted the same in the name of one of the co-owners only, i.e., the mother of the assessee herein.

9. We notice that the provisions of Rule 37BA prescribe a methodology for claiming credit for TDS in this kind of situation. As per Rule 37BA(2)(i), when the 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 for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee. Admittedly, in the present cases, the TDS credit of Rs.3.00 lakhs each should be given to the assessee herein, since proportionate part of the income on which tax has been deducted was assessed in the hands of the assessee herein.

10. We notice that the proviso to Rule 37BA(2) and clauses (ii) and (iii) thereof prescribe a procedure for claiming credit. The difficulty of the assessee herein is that they do not have any control over the buyers of

the property and without co-operation of the buyer of the property, the procedure prescribed in Rule 37BA(2) cannot be fulfilled. We have already noticed that the buyer of the property has committed an error in remitting entire amount of TDS in the name of the mother of the assessee herein.

11. The assessee herein has submitted that their mother has claimed credit for Rs.3.00 lakhs only, while her Form 26AS should be showing TDS amount of Rs.9.00 lakhs. This fact also requires verification.

12. Accordingly we are of the view that this peculiar problem can be resolved at the end of the revenue only. When asked as to who can resolve this problem, the Ld D.R submitted that the TDS officer of the assessee herein may be entrusted with the job. Accordingly we set aside the orders passed by Ld CIT(A) in the hands of both the assessee herein and restore the matter of resolving the matter of granting due "TDS credit" to the file of the TDS officer with the following directions:-

- (a) He shall verify the records of mother of the assessee herein and ensure that she has been given credit for her share of Rs.3.00 lakhs only. He also should ensure that the TDS amount remitted by the buyer of property was Rs.9.00 lakhs.
- (b) After satisfying himself that the balance amount of TDS of Rs.6.00 lakhs is pending to be given credit, he may give credit @ Rs.3.00 lakhs each to the credit of assessee herein, he is permitted to do so.

(c) If he finds that he cannot do so and finds that the procedure prescribed in Rule 37BA(2) is mandatorily to be followed, then he may issue summons to the buyers of the property and enforce them to complete the procedures prescribed in Rule 37BA(2) of I.T rules and the same would result in giving credit of TDS amount to the assessee's herein.

We order accordingly.

13. In the result, both the appeals are treated as allowed for statistical purposes.

Pronounced on 28-06-2019

Sd/-  
**(PAVAN KUMAR GADALE,)**  
**JUDICIAL MEMBER**  
Dated: the 28th June, 2019.  
**\*am**

Sd/-  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
6. ITO (TDS)
- 7.Guard File

By Order  
Asst.Registrar