

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.933/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Assistant Commissioner of Income Tax,
Circle – 8, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Bajaj Finance Ltd.,
Bombay-Pune Road,
Akurdi, Pune – 411035

PAN : AABCB1518L

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Mutha
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 18-07-2019

घोषणा की तारीख / Date of Pronouncement : 01-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 23-12-2016 for the assessment year 2008-09.

2. The Revenue in appeal has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds :

- “1. *Whether on the facts and circumstances of the case the Ld. CIT(A) is justified in giving direction to the AO to allow the TDS credit based on the certificate furnished by the assessee when there is possibility that the amount may not have deposited in bank account by deductor or transaction was not genuine therefore the same is not reflecting in Form No. 26AS.*
2. *The appellant craves leave to add, amend or alter any of the above grounds of appeal.”*

3. This is the second round of litigation before the Tribunal on limited issue of not granting TDS credit to the assessee on the basis of original TDS certificates furnished by the assessee at the time of assessment proceedings.

4. The facts germane to the present appeal are : The assessment u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the impugned assessment year was completed on 29-12-2010 in the case of assessee. While finalizing the assessment, the Assessing Officer did not grant benefit of TDS credit amounting to Rs.4,99,92,971/- to the assessee, though the assessee furnished original TDS certificates. The assessee filed appeal before the Commissioner of Income Tax (Appeals) against the additions/disallowances made by the Assessing Officer and also assailing the action of Assessing Officer in not granting TDS credit of the entire amount as claimed. The Commissioner of Income Tax (Appeals) vide order dated 31-05-2012 directed the Assessing Officer to allow credit of TDS to the assessee on the basis of credits available in Form No. 26AS statements as on the date of giving effect to his order.

4.1 Still aggrieved, the assessee filed appeal before the Tribunal in ITA No. 1676/PN/2012 for assessment year 2008-09 inter alia challenging the findings of Commissioner of Income Tax (Appeals) in restricting the credit to the extent reflected in Form No. 26AS. The contention of the assessee was that the assessee has furnished original TDS certificates aggregating to Rs.10,23,35,857/- against which TDS credit of Rs.5,23,42,886/- only was granted. The Tribunal after analyzing the issue directed the Assessing Officer to allow credit for the TDS in the light of judgment rendered by Hon'ble Allahabad High Court in the case of Rakesh Kumar Gupta Vs. Union of India in Civil Miscellaneous Writ Petition (Tax) No. 657 of 2013 decided on 06-05-2014. For the sake of completeness the relevant extract of the directions of Co-ordinate Bench vide order dated 30-06-2014 are reproduced here-in-below :

50. Not being satisfied with the directions of the CIT(A), assessee is in appeal before us. It has been contended before us that non-availability of entire credit in the 26AS statement is on account of default on the part of the deductors of tax in filing the e-TDS returns incorrectly. However, such default on the part of the tax deductors cannot be a ground to deny credit to the assessee for the taxes deducted on its behalf, which is fully supported by the TDS certificates on record. The learned counsel for the assessee pointed out that even the CBDT vide its Instruction No.5 of 2013 has opined that wherever requisite details and particulars in the form of TDS certificates issued by the deductor are available, the Assessing Officer ought to grant the credit to the tax payer. In the course of hearing, the learned counsel has also referred to the following observations of the Hon'ble Allahabad High Court in the case of Rakesh Kumar Gupta vs. Union of India & Others vide Civil Misc. Writ Petition (Tax) No.657 of 2013 dated 06.05.2014, which has dealt with a somewhat similar controversy :-

“In the light of the aforesaid, we find from the perusal of the counter affidavit, that the respondents have denied refunding the TDS on the ground that the refund would only be granted when the TDS matches with the details mentioned in Form 26AS. Since the mismatching is not attributable to the assessee and the fault solely lay with the deductor, we find that a case has been made out for grant of a mandamus for refund of the TDS amount. The petitioner has also made out a case for payment of interest since we find that the delay in refunding the amount was attributable solely with the Income Tax Department and there is not fault on the part of the assessee.”

51. *By placing reliance on the aforesaid observations of the Hon'ble Allahabad High Court, it is sought to be made out that assessee could not be denied credit for the TDS merely because there was some mismatch in the 26AS statement, which obviously is not filed by the assessee but by the tax deductors.*

52. *On the other hand, the learned Departmental Representative has not disputed the position canvassed by the assessee that due credit for the TDS deserves to be allowed.*

53. *Having considered the aforesaid position canvassed by the assessee, we deem it fit and proper to affirm the directions of the CIT(A) with certain modifications. The Assessing Officer is hereby directed to allow credit for the tax deducted at source on behalf of the assessee in the light of the judgement of the Hon'ble Allahabad High Court in the case of Rakesh Kumar Gupta (supra). Thus, on this aspect, assessee succeeds for statistical purposes.*

4.2 The Assessing Officer at the time of passing order giving effect to the order of Tribunal did not comply with directions of Tribunal order and benefit of TDS credit as claimed by the assessee on the basis of original TDS certificates was not allowed.

4.3 Aggrieved against the order giving effect passed by Assessing Officer dated 05-12-2014, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order directed the Assessing Officer to follow the directions of the Tribunal in granting TDS credit based on the TDS certificate filed by the appellant. The relevant extract of the findings of directions of Commissioner of Income Tax (Appeals) are reproduced here-in-below :

“4.2 The AO ought to have followed the decision of the Tribunal in granting TDS based on the TDS certificate filed by the appellant, though the amounts are not reflected in Form 26AS. The AO is directed to once again to allow the TDS credit based on the certificates furnished by the appellant. However, he may inform the concerned TDS officer of not filing the TDS returns by the concerned deductors for necessary action. The AO is also directed to give credit to the balance amount as appearing in the Form 26AS. With these directions, the appeal is disposed.”

4.4 The Revenue in present appeal has assailed the findings of Commissioner of Income Tax (Appeals) in directing the Assessing Officer to grant TDS credit based on the certificates furnished by the assessee.

5. Shri Nikhil Mutha appearing on behalf of the assessee submitted at the outset that the Assessing Officer has violated the directions of Tribunal. In ITA No. 1676/PN/2012 by the assessee the Tribunal vide order dated 30-06-2014 had in unambiguous terms directed the Assessing Officer to grant the benefit of TDS credit on the basis of original TDS certificates filed by the assessee. The Assessing Officer while passing the order giving effect to the order of Tribunal has deliberately closed his eyes on the directions of Tribunal. In the second round of appeal, the Commissioner of Income Tax (Appeals) again vide order dated 23-12-2016 directed the Assessing Officer to comply with the directions of Tribunal but till date the Assessing Officer has not given effect to the order of Tribunal dated 30-06-2014.

6. Shri N. Ashok Babu representing the Department filed a copy of the order dated 16-07-2019 passed u/s. 154 by the Assessing Officer giving effect to the directions of Tribunal order dated 30-06-2014.

7. The Assessing Officer has now complied with the directions of Tribunal though belatedly. The present appeal filed by the Revenue is without any merit. We see no infirmity in the directions by the First Appellant Authority to Assessing Officer to comply with the decision of Tribunal. In fact, judicial discipline demands that the Assessing Officer

should have complied with the directions of the Tribunal in first instance only. This appeal by the Department is misdirected and is against the well set principles of judicial propriety, hence, dismissed.

8. In the result, appeal by the Revenue is dismissed.

Order pronounced on Thursday, the 01st day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st August, 2019
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-6, Pune
4. The Pr. Commissioner of Income Tax-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune