

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
and
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

SP No.266/Bang/2019
(In ITA No.2045/Bang/2019)
(Assessment year: 2017-18)

and

ITA No.2045/Bang/2019
(Assessment year:2017-18)

Shri Murtooz Ali Khan,
No.96, 8th Cross, Shivaji Road,
N.R.Mohalla,
Mysore-570 007.
PAN:ACIPA 7354 D

... Petitioner/
Appellant

Vs.

Deputy Commissioner of Income-tax, CPC,
Bengaluru.

... Respondent

Assessee by : S/Shri Vageesh Hegde & Bhargava SN, Cas.
Respondent by: Smt. R.Premi, JCIT(DR)

Date of hearing: 11/10/2019
Date of pronouncement: 16/10/2019

ORDER

Per B.R. BASKARAN, AM:

The assessee has filed the stay petition seeking stay of outstanding demand of Rs.2.99 lakhs raised upon him in the intimation issued u/s 143(1) of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2017-18.

2. Learned counsel appearing for assessee submitted that the assessee was employed in a company named M/s.Devamatha Commercials Pvt. Ltd. He submitted that during the previous year 2016-17 relevant to AY 2017-18, TDS amount to the tune of

Rs.2.40 lakhs was deducted from the salary of the assessee. It is submitted that though the tax was deducted at source from the salary, yet the TDS certificate was not issued to the assessee. The Assessee filed return of income for AY 2017-18 claiming the above said amount of TDS against tax due from him. However, TDS amount was not given credit to the assessee and it was learnt that the employer has failed to remit the TDS amount to the credit of the Government. Accordingly, a demand of Rs.2,99.079/- raised upon the assessee. The Ld. AR further submitted that assessee filed an appeal before the CIT(A) pleading that TDS amount should be given credit and the demand should be cancelled, but the appeal was dismissed. The Ld. AR submitted that TDS amount should not be demanded from the assessee in terms of sec.205 of the Act and in this regard he placed reliance on instruction No.275 dated 01/06/2015 issued by CBDT and also decision rendered by the Hon'ble High Court of Karnataka in the case of *Smt.Anusuya Alva vs. DCIT* (2005) 145 Taxman 152 (Kar.). Accordingly, ld. AR submitted that the demand should be stayed.

3. On the contrary, learned DR submitted that the deductor has not remitted the TDS amount. Hence, TDS credit was not given to the assessee. Accordingly he submitted that the order passed by the CIT(A) cannot be found fault with.

4. On consideration of the facts, with concurrence of both the parties, the appeal itself was taken up for hearing. The appeal is barred by limitation by 12 days. The assessee has moved a petition

requesting the bench to condone the delay. Having regard to the submissions made in the petition, we condone the delay and admit the appeal for hearing. We heard the parties and perused the record. It is the contention of the assessee that the employer, being the deductor of TDS, has not remitted the amount to the credit of the Income-tax Department. The CBDT instruction No.275 referred above, reads as under:

“Grievances have been received by the Board from many taxpayers that in their cases the deductor has deducted tax at source from payments made to them in accordance with the provisions of Chapter-XVII of the Income-tax Act, 1961 (hereafter 'the Act') but has failed to deposit the same into the Government account leading to denial of credit of such deduction of tax to these taxpayers and consequent raising of demand.

2. As per Section 199 of the Act credit of Tax Deducted at Source is given to the person only if it is paid to the Central Government Account. However, as per Section 205 of the Act the assessee shall not be called upon to pay the tax to the extent tax has been deducted from his income where the tax is deductible at source under the provisions of Chapter XVII. Thus the act puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch cannot be enforced coercively.

3. This may be brought to the notice of all the assessing officers in your region so that if the facts of the case so justify, the assessee are not put at any inconvenience on account of default of deposit of tax into the Government account by the deductor.

4. This issues with the approval of Chairperson, CBDT.”

A perusal of the abovesaid instruction would show that the CBDT has referred to the provisions of section 205 of the Act, which states that the assessee shall not be called upon to pay tax to the extent tax has

been deducted from his income where tax is deductible at source under TDS provisions. Accordingly, it was instructed by the CBDT that demand on account of tax credit mismatch cannot be enforced coercively. The jurisdictional Hon'ble Karnataka High Court has also expressed the view in the case of *Smt.Anusuya Alva*(supra) that revenue could not enforce recovery of amount from the assessee for failure of the deductor to remit the TDS. Hence, though the demand raised upon the assessee was right in law, yet the AO should not enforce recovery of the same from the assessee as per CBDT instruction and the decision of the Hon'ble High Court of Karnataka referred above.

5. In the instant case, TDS credit was not given to the assessee, since the deductor has failed to remit the same. Hence the action of the income tax department cannot be found fault with. Under these set of facts, we are of the view that there is no merit in the appeal of the assessee and accordingly the demand raised upon the assessee cannot be cancelled.

6. However, the contention of the assessee is that the TDS amount has been deducted from his salary and in support of the same, he has filed copies of salary slips in the paper book. It is the contention of the assessee that the TDS amount already deducted from the salary should not be demanded. There is merit in this contention in view of the CBDT instruction, referred above. We notice that there was no occasion for the AO to examine the details of TDS deducted from the assessee. Accordingly we restore this issue to the file of

the AO with the direction to satisfy himself on the quantum of TDS deducted from the salary of the assessee during the year under consideration and direct him not to enforce the collection of tax arising upon the assessee on account of not giving credit of the TDS amount deducted from the assessee as per the CBDT instruction and the decision of the Hon'ble Karnataka High Court referred above.

7. In the result, the appeal of the assessee is treated as allowed. Since we have disposed of the appeal itself, stay petition becomes infructuous and accordingly dismissed.

Order pronounced in the open court on 16th October, 2019.

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT

Place : Bengaluru
Dated : 16/10/2019
srinivasulu, sps

Copy to :

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

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore