

**IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, BENGALURU**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.3409/Bang/2018
(Assessment Year : 2010-11)

M/s JSR Logistics, No.82, Noor, Manzil, Hussain Nagar, Raghavendra Colony, 1st Stage, Ballari-583 101	Vs.	The ACIT, Circle-1, Aayakar Bhavan, Staff Road, Fort, Ballari-583 102
PAN/GIR No.AAHF2764M		

And

**ITA No.3414/Bang/2018
(Assessment year 2010-11)
(‘C’ Bench)**

Sri Pethan Namasivayam Murughan & Smt. Thangaraju Logambal, L/H of Late Sri Thangaraj Pethan, Prop: JSR Logistics, Authorised Rep. Raghavendra K Busetty, S/o B Krishnamurthy, No.5,Ganesh Colony, 1st Main ,SN Pet, Ballari-583 101.	Vs.	The ACIT, Circle-1, Aayakar Bhavan, Staff Road, Fort, Ballari-583 102
PAN No.AODPP1802L		
(Appellant)	..	(Respondent)

Appellant by :	Shri Siva Prasad Reddy, IRS (Retd.)
Respondent by :	Smt. R.Premi, JCIT

Date of Hearing	04-03-2020
Date of Pronouncement	06-03-2020

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ORDER

PER PRADIP KUMAR KEDIA : AM

Both the captioned appeals are interconnected and thus heard together and disposed of by this common order.

2. The captioned appeal in **ITA No.3409(Bang)/2018** has been filed by the assessee firm against the order of CIT(A), Gulbarga dated 24-09-2018 arising from the assessment order/intimation under sec.143(1)(a) of the IT Act, 1961 (The Act) dated 19-11-2011. The other appeal in ITA No. 3414/Bang/2018 has been filed by the partner of the firm in the connected issue of TDS credit.

3. Briefly stated, the assessee in ITA no. 3409/Ban/ 2018 is a partnership firm formed on 16-07-2009 engaged in the business of transport service provider with partners namely; 1) Smt. S.Jyothilakshmi and 2) Late Sri Thangaraj Pethan. Prior to the formation of the firm, late Shri Thangaraj Pethan, used to carry on business in the name of JSR Logistics as a Proprietor (Pan No.AODPP1802L) and later on 16-07-2009 proprietorship was converted into a partnership firm with Pan No.AAHFJ2764M. The assessee firm e-filed return of income under sec.139 of the Act and claimed a TDS of Rs.42,95,038/- on account of certain transport receipts. However, as per statement of the depts. in 26AS Rs.40,56,387/- was shown credited in the account of partner late Shri Thangaraj Pethan (Pan No.AODPP1802L) and balance of Rs.2,38,651/- was credited to the assessee firm. While processing the return of the partnership firm under sec.143(1) of the Act, the AO has

denied the benefit of TDS of Rs.40,56,387/- not appearing against the pan number of the firm.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A), however did not entertain the claim of the assessee and held that CPC has given TDS credit as per data available in form no.26AS.

5. Aggrieved, the assessee preferred appeal before the Tribunal.

6. Before the Tribunal, the ld.AR for the assessee submitted that the TDS credit of Rs.40.56 lakhs in question was also claimed in the return of the partner Shri P.Thangaraj (ITA No.3414/B/2018) while filing the return under sec.139(1) of the Act on 15-10-2010. However, the aforesaid return was revised on 30-03-2012 and the aforesaid TDS credit was withdrawn. The ld. counsel thus submitted that the assessee firm or its partner, as the case may be, is entitled to the TDS credited at one place; be it firm or its partner. The ld.AR submitted that the revenue has denied the credit in both the hands i.e. firm as well as partner; which is the centre of controversy in the captioned appeals. It was submitted that the matter should be remanded back to the file of the AO for granting appropriate credit in the hands of either from firm or partner as may be considered expedient.

7. The ld. DR fairly submitted that the issue may be examined by the AO in accordance with law.

8. On careful consideration of submissions made on behalf of the assessee conjointly i.e. ITA No.3409/Bang/2018 concerning partnership firm and ITA No.3414/Bang/2018 concerning partner late P.Shri Thangaraj for assessment year 2010-11; We find complete reasonableness in the plea of the assessee for grant of TDS credit of Rs.40,56,837/- in question in one hand or the other. We find force in the plea of the assessee that credit for TDS of s.40,56,837/- be

given either in the hands of the firm(JSR Logistics) or in the hands of the assessee and cannot remain in the custody of the department and cannot be unlawfully retained at both places. Without going further, we remand the issue to the file of the respective AO of firm and the partner for *denovo* examination and grant of credit suitably as may be permitted under the scheme of the Act either in the hands of the firm or in the hands of the partner. In view of the aforesaid observations both the appeals of the assessee are allowed for statistical purpose.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on 06-03-2020

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT
Place: Bengaluru
Dated: 06-03-2020
*am

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Copy of Order Forwarded to:-

1. Revenue
2. Assessee
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Bengaluru .
6. Guard file.

By order

Asst. Registrar

