

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.541/PUN/2020

निर्धारण वर्ष / Assessment Year : 2014-15

ACIT, Circle-2,
Pune

Vs. North American Coal
Corporation India Pvt. Ltd.
Ist Floor, Deepgriha,
Chaya Society, 50/1/2,
Erandvane, Pune 411 004
PAN : AADCN5504E

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri S.P. Walimbe
Shri Siddhesh Chaugule

Date of hearing 21-04-2021
Date of pronouncement 22-04-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue emanates from the order dated 11.06.2020 passed by the CIT(A)-3, Pune anent to the order u/s 154 of the Income-tax Act, 1961 (hereinafter called 'the Act') delivered by the Assessing Officer (AO) for the assessment year 2014-15.

2. The only issue raised in this appeal is the denial of grant of credit for tax deducted at source. Briefly stated, the facts of the case are that the assessee is a wholly owned subsidiary of The North American Coal Corporation (NACC), USA and it is

engaged in the business of providing mine development services to Indian clients. The assessee paid royalty to its parent NACC, USA. The royalty amount was offered by the parent company to tax in India at the gross rate of 10%. The AO, while completing the assessment of the parent company, subjected the royalty and technical fees income to tax @ 40%. In order to prevent protracted litigation, the parent company as well as the assessee filed applications before the Income-tax Settlement Commission (ITSC) on 04-12-2014. The assessee's application covered three assessment years, viz., 2012-13, 2013-14 and 2014-15. The assessee had filed returns of income u/s 139 of the Act for the assessment years 2012-13 and 2013-14 before filing the application before the ITSC. However, no such return was filed for the assessment year 2014-15. In the application filed before the ITSC, the assessee made disclosure of total income of Rs.16.80 lakh for the assessment year 2014-15. In the order passed u/s. 245D(4), the ITSC determined the total income of the assessee for the year in question at Rs.32,95,661/-. The computation of income by the ITSC also contained a direction to give credit for taxes already paid. The AO passed an order giving effect to the ITSC order, thereby

raising demand of Rs.4,14,280/-, without granting credit for TDS amounting to Rs.70,53,096/-. The assessee moved rectification application on 18-04-2019 before the AO urging that credit for TDS be granted. Such an application was rejected by the AO vide his order dated 21-06-2019. The assessee appealed against the said order to the Id. CIT(A), who countenanced the assessee's standpoint that credit for TDS ought to have been granted. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

3. I have heard both the sides through Virtual Court and scanned through the relevant material on record. The short question is as to whether the assessee is lawfully entitled to the adjustment of TDS for the year under consideration in the computation of total income by the AO in the order passed giving effect to the order of the ITSC. The AO, in denying such credit for TDS, has primarily held that section 240 of the Act is inapplicable to the assessee's case as no return of income for the year was filed u/s 139 of the Act before filing application before the ITSC. The whole controversy rotates around the interpretation of section 240 of the Act, the relevant part of which reads as under:

“Where, as a result of any order passed in appeal or *other proceeding under this Act*, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf.”

4. On going through the mandate of the above extracted provision, it becomes unequivocal that where a refund becomes due to the assessee, the AO is obliged to issue refund without requiring the assessee to file any claim. The two situations covered in this provision requiring the *suo motu* grant of refund are, first, where any order is passed in appeal and second, where any order is passed in ‘*other proceeding under this Act*’. Only the second situation is relevant in the present context. There can be no denying the fact that an order passed u/s.245D(4) of the Act by the Settlement Commission is undoubtedly an order passed under ‘*other proceeding under this Act*’. Once such an order gets passed by the ITSC and some refund becomes due to the assessee by virtue of such an order, the AO u/s. 240 of the Act is obliged to issue such refund without even any waiting for the assessee to lodge a formal claim in this regard.

5. For denying adjustment of TDS, the AO has predominantly harped on the fact that the assessee did not file any return of income u/s 139 of the Act for the year under consideration before filing application to the ITSC. It is an undisputed position that the assessee did not file return u/s 139 of the Act for the assessment year under consideration before filing application to the ITSC. Now the question is whether non-filing of return u/s 139 of the Act is fatal to allowing credit for TDS in the grant of refund u/s 240 of the Act. The admitted fact is that the assessee albeit did not file return u/s 139 for the year but offered income of Rs.16.80 lakh in its application before the ITSC, which was eventually determined by the Commission at Rs.32.95 lakh. This *prima facie* shows that the Commission took cognizance of the declaration of income for the year in the application made by the assessee before it. Rather, the ITSC categorically observed in its order dated 24-05-2016 that the assessee did not file any return of income for the assessment year 2014-15 before filing the application.

6. Section 245C, dealing with application for settlement of cases, clearly provides through sub-section (1) that : “An assessee may, *at any stage of a case relating to him, make an*

application in such form and in such manner as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided.” This provision embodies that the assessee can make an application in the prescribed form ‘*any stage of a case*’ relating to him. One interpretation of the expression ‘at any stage of a case’ can be the pendency of assessment pursuant to filing of return or atleast the factum of having filed return and another of even non-filing of return. In the present context, the ‘stage of a case’ is not confined only to the post-filing of return but also covers pre-filing of the return u/s.139 of the Act. A cue for this is found from sub-section (1B) of section 245C which deals with the calculation of tax on income disclosed in the application. This sub-section covers two situations, namely, (i) *if the applicant has not furnished a return in respect of the total income of that year...*; and (ii) if the applicant has furnished a return in respect of the total income of that year.... Thus, it is graphically manifested that the application before the ITSC covers not only a case where the assessee has already filed a return u/s 139 of the Act before moving such an application but also a case where the assessee

has not furnished a return in respect of the total income of that year. *Ex consequenti*, there is no legal flaw in the assessee filing application before the ITSC in respect of the assessment year 2014-15 without filing return u/s.139 of the Act which was rightly taken cognizance of by the ITSC. In that view of the matter, the order passed by the ITSC u/s. 245D(4) of the Act for the year under consideration assumes the character of an order passed in *other proceeding under this Act*, which stipulates the grant of *suo motu* refund by the AO.

7. The direction given by the ITSC has been interpreted by the AO as for granting adjustment only of the taxes paid by the assessee and not the TDS. The direction is reproduced hereunder:

“Since the details of tax payments are available only with the AO, the AO shall compute the tax payable including surcharge and interest, if any, *after giving credit for taxes already paid by the applicant* and issue demand notice u/s.245D(6) of the Income-tax Act.”

8. A careful perusal of the direction explicitly indicates that the AO shall compute the tax payable “after giving credit for taxes already paid by the applicant”. ‘Taxes already paid’ do not mean only the taxes directly paid by the assessee but also

those paid on its behalf. Sub-section (1) of section 199 with the caption `Credit for tax deducted' states that "*Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made....*". Thus, it is glaring from section 199 that the tax deducted at source is also a payment of tax on behalf of the assessee in the instant case. In other words, the ITSC's direction for *giving credit for taxes already paid by the applicant* brings into its fold not only the amount of tax paid by the assessee but also the amount of tax deducted at source on behalf of the assessee. To sum up, the order passed by the ITSC u/s 245D(4) of the Act even *de hors* the filing of return u/s 139 of the Act is an order passed under '*other proceeding under this Act*' for the purposes of section 240 and the amount of TDS is a component of the amount of taxes already paid in terms of section 199 of the Act. The sequitur is that the Id. CIT(A) was fully justified in directing the AO to allow credit for TDS amounting to Rs.70.53 lakh in determining the amount of refund due to the assessee for the year under consideration. I accord imprimatur to the impugned order.

9. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 22nd April, 2021.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 22nd April, 2021
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-3, Pune
4. The Pr. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	21-04-2021	Sr.PS
2.	Draft placed before author	22-04-2021	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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