

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**[Through Virtual Court]**

**ITA. No: 277/RJT/2018  
(Assessment Years: 2012-13)**

<b>M/s. Hindustan Minment Inc. S.No. 10/Paiki, Near Petrol Pump, Jamnagar- Rajkot Bypass Road, Vill. Khimrana, Tal. &amp; Dist.: Jamnagar</b>		<b>I.T.O., Jamnagar</b>	<b>Ward-3(2),</b>
<b>PAN No. AAGFH2331D</b>			
<b>(Appellant)</b>		<b>(Respondent)</b>	

**Appellant by : Shri M. J. Ranpura, A.R.  
Respondent by : Shri S. S. Rathi, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 11 -08-2021  
Date of Pronouncement : 24-08-2021

**PER MAHAVIR PRASAD, J.M.**

1. This appeal has been filed by the Assessee is directed against the order of the Commissioner of Income Tax ('hereinafter called CIT(A)') order no. CIT(A)-

/Jam/160/2016-17 order dated 02/07/2018. The assessee has taken solely grounds of appeal:

- 1. The learned Commissioner of Income-tax (Appeals), Jamnagar [CIT(A)] erred on facts as also in law in confirming action AO in rejecting the appellant's application for rectification of mistake field u/s. 154 of the Income-tax Act, 1961 on the alleged ground that the appellant has neither claimed any credit in TDS of Rs.12,40,875/- in return of income nor filed revised return income by claiming credit of TDS. The rejection of rectification application is totally unjustified and against the law and therefore the mistake apparent from record may kindly be directed to be rectified.*
2. Brief facts of the case are that assessee is engaged in the business of trading of Cement, Coal, Sand and other allied items. Originally return of income was filed u/s. 139(1) of the Act on 24/09/2012 declaring total income at Rs, 1,82,186/-.
3. At the time of filing original return of income appellant had not claimed credit of TDS of Rs. 12,40,870/- deducted by the M/s. Aditya Coke Pvt. Ltd. as the same was not reflected in the statement of tax paid/deducted in the form no. 26AS. However, the said tax payment was duly reflected in book of account and audit report for the assessment year under consideration as TDS.
4. Subsequently, on verification of form No. 26AS, it came to the knowledge that TDS so deducted by the said M/s. Aditya Coke Pvt. Ltd. has been paid as the credit of the same is reflected in the form No. 26AS. As the income corresponding to the TDS has been shown in the books of account, credit of the TDS is legitimate. As the credit of the TDS was not claimed in return of income because of non-appearance in the Form 26AS at the time of filing return of income, however knowing the correct situation, the appellant filed an

application for rectification of mistake online vide reference no. CPC/1213/P5/1218491012. However, the same was not accepted and rejected with the remark that "Rectification Right Transferred to AST". Thereafter, appellant vide letter 28/01/2015 filed rectification with jurisdictional Assessing Officer to rectify the above-stated mistake apparent from the record.

5. But the AO in total disregards to the fact of the case and submission made has summarily rejected the application for rectification of mistake vide order u/s.154 of the Act 08/09/2016 with the remarks that there is no mistake apparent from record as the appellant has neither claimed arty credit of TDS in return of income nor filed any revised returned income by claiming credit of TDS.
6. The appellant had carried out Factory Operations and management of M/s Aditya Coke Pvt. Ltd. The appellant as per the terms of agreements between the parties from time to time charged professional services fees of Rs. 1,24,18,170/- and credited to the profit and loss account. Since the amount charged the limit of-turnover within the meaning of section 44AB of the Act, the books of were audited and the same are filed with the department.
7. That in view of the provisions of section 194J, M/s Aditya Coke Pvt. was required to deduct tax at source at 10% of the professional services of Rs. 1,24,16,170/-. The accordingly shown the TDS of Rs. 12,40,875/- as receivables from the Government in Schedule 5 of the balance same is part of paper book at page no. 27. The appellant was accordingly required to claim credit of TDS of Rs. 12,40,875/- in the return of income filed on 12.09.2012. However, the appellant could not claim if because on online verification of

- payment of TDS by the deductor in form 26AS at the time of filing of return, it was seen that the deductor has deducted the tax at source but has not remitted in to Govt. a- and as such in order to avoid any default on the part of the appellant the return of income was within the due by paying the tax u/s 140A of the Act.
8. Thereafter on inquiry with the deductor it was revealed that they have remitted the TDS late and as such it was not found place when the return was filed by the appellant. Accordingly it was informed they have remitted the TDS of Rs. 12,41,617/- on 24.03.2013. In support of payment of TDS of Rs. 12,41,617/- in Government account, copy of form 26AS is part of paper book at page no. 36 to 39 and assessee filed receipt of professional service fees, copy of ledger of M/s Aditya Coke Pvt. Ltd along with the service bills with the lower authorities and same are part of paper book at page no. 40 to 51.
9. In view of the above and can be seen from the records that the claim of IDS of Rs. 12,41,617/- is duly supported by the corresponding referable income credited in the profit and loss account Since the deductor had not remitted the IDS in Government account before the due of filing of return u/s 139(1) of the Act, the appellant did not claim it in the return of income. Even if it was claimed in the return of income it was not for the credit of the in the absence of evidence in the form of form 26AS supporting the credit of the TDS in Government account. However, as soon as they came to know that the deductor has remitted the IDS on 24.03.2013. The appellant moved an application u/s. 154 and same was rejected by both the lower authorities on the ground that appellant is not entitled as it has not claimed at the time of filing of original return of income u/s. 139(1).

10. Now appellant has approached us for redressal of his grievance and to give necessary direction to the lower authorities for refund of TDS of Rs. 12,41,617/-.
11. We concur with the argument of the Ld. A.R. that at the time of filing of original return u/s. 139 the payment of TDS was not reflected in Form 26AS as deductor had not remitted the same in the Government account and as evident from the record and from Form 26AS M/s Aditya Coke Pvt. Ltd. had remitted TDS of Rs. 12,41,617/- on 24/03/2013.
12. The Hon'ble High Court of Andhra Pradesh in the case of CIT vs. Bhooratnam & Co. [2013] 357 ITR 396 wherein it is held that "the revenue cannot be allowed to retain tax deducted at source without credit being available to anybody, if credit is not allowed to the assessee, and the joint venture has not filed return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law. Therefore, in our view, the Assessing Officer erred in denying the benefit of the TDS mentioned in the TDS certificates filed by the assessee on the ground that the TDS certificate is issued in the name of the joint venture or a director and not the assessee".
13. The CBDT has also vide instruction No. 5/2013 dated 08/07/2013 even in the cases of mismatch of TDS directed to give credit of TDS when the assessee furnishes the TDS certificate. In the present case, when the assessee furnishes the TDS certificate. In the present case, the appellant furnished the TDS certificate and at the time of filing of original return could not file because M/s Aditya Coke Pvt. Ltd. remitted the TDS in the Government account on 24/03/2013. Therefore same was not reflecting at the time of filing of return.

14. In view of the above, we set aside this matter back to the tile of the Assessing Officer examine the Form 26AS and other details have been submitted by the appellatant before the lower authorities and if it is found that M/s Aditya Coke Pvt. Ltd. has remitted the TDS of Rs. 12,41,617/- in the Government account then will give benefit of the same to the assessee.

15. In the result, appeal filed by Assessee is allowed.

Order pronounced in Open Court on 24- 08- 2021

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 24 /08/2021

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Rajkot