

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 7201/MUM/2019
Assessment Year: 2016-17**

Income Tax Officer-15(1)(3),
Room No. 15B, Ground floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Vs. M/s City and Industrial Development
Corporation of Maharashtra Ltd.,
CIDCO Bhavan, CBD Belapur, Navi Mumbai-
400 614.
Nirmal, 2nd floor, Nariman Point,
Mumbai-400021.
PAN No. AACCC 3303 K
Respondent

Appellant

Revenue by : Mr. Shreekala Pardeshi, DR
Assessee by : Mr. Madhur Agrawal, AR

Date of Hearing : 26/08/2021
Date of pronouncement : 03/09/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai [in short 'CIT(A)'] for the assessment year 2016-17 dated 26.08.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Brief facts of the case are, the assessee filed its return of income for the assessment year (AY) 2016-17 declaring total income of Rs.5,00,000/- on

20.03.2018. The return was processed u/s 143(3) of the Income Tax Act, 1961 (in short the Act). The case was selected for scrutiny under CASS. Accordingly, the notices u/s 143(2) and 142(1) were issued and served on the assessee.

The assessee is appointed as a New Town Development Authority for developing the Navi Mumbai Area u/s 113(3A) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP) and a Special Planning Authority for other notified area u/s 40(1)(b) r.w.s. 113(3A) of the MRTP Act for carrying out its activities as New Town Development Authority. As per the provisions of section 113(3A) and 41B r.w.s. 113(3A) of the MRTP Act and various government resolution on notification issued by the Government of Maharashtra.

3. At the time of assessment, the Assessing Officer (AO) observed that ITS statement generated by the system and noticed that the company had received rent, professional fees, contractual receipt and interest free income, in all aggregating to Rs.509,32,42,297/- for TDS deducted of Rs15,38,15,311/-. The assessee had claimed credit for TDS amounting to Rs.509,32,42,297/- was not included in the total income. When the assessee was asked to explain above said income should not be added back to the total income. In response, the assessee vide letter dated 21.12.2018 submitted that as the tax was deducted using the PAN No. of the assessee and the same was reflected as paid against the assessee and the corresponding income not being chargeable to tax in the hands of the assessee. The refund of the same was claimed by the assessee. Accordingly, the assessee further submitted that merely because the TDS credit was claimed as refund by the assessee, it cannot be said that the income pursuance to the assessee.

4. After considering the submissions of the assessee, the Assessing Officer observed that as per the provisions of section 199 of the Act, any deduction made in accordance with or making provisions of this Chapter and paid to the Central Government shall be treated as payment of tax on behalf of the person from whose income, the deduction was made or the owner of the property or of the depositor or of the owner of the property or the unit-holder or of shareholder as the case may be. As per Rule 37BA(3)(i) of the Income Tax Act, 1962, credit for tax deducted at source and paid to the Central Government shall be given over the assessment year for which such income is assessable. Accordingly, the Assessing Officer rejected the claim for credit of TDS claimed by the assessee.

5. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A).

6. The Ld. CIT(A) after considering the facts on record allowed the appeal of the assessee with the following observations:

“2.5.4. The AO denied the credit of the said TDS claimed on premises that the appellant had not offered the income to tax and consequently, the TDS credit cannot be allowed u/s. 199 r.w.r 37BA(3)(i). The appellant has contended that the TDS credit should be allowed as the payments were received by it as an agent of the Government of Maharashtra and the appellant was not liable to pay any taxes on the same.

2.5.5 I have perused the facts of the case and the impugned assessment order. There is no dispute as regards the fact that the appellant has not offered the income to tax as it was merely acting as the collecting agent for the Government of Maharashtra. However, the appellant has offered the commission income to tax. As the taxes have been deducted on the payments made to the appellant, though the same are not taxable in the hands of the appellant, the appellant has to be granted TDS credit of the same as TDS has been

deducted using the PAN of the appellant. Moreover, if the TDS credit is not granted to the appellant, the collection of The tax by the exchequer would be unconstitutional. In light of these facts, I hereby direct the AO to allow the credit of TDS as claimed by the appellant after due verification and in accordance with the provisions of the Act. This ground of appeal is allowed."

7. Aggrieved with the above order the Revenue is in appeal before us raising following ground of appeal :

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting the claim of credit of tax of Rs.15,38,15,311/-."

8. Considered the rival submissions and material on record. We noticed that the assessee is wholly owned company of Government of Maharashtra and it is acting as an agent of the Government for carrying out all activities and statutory duties for the development of new town. It is fact on record that the taxes were deducted on various payment made to the assessee to the extent of Rs.1,53,81,15,311/-. The assessee claimed the above said TDS credit in the return of income and even AO have observed that the above said amount is not included in the total income of the assessee. The assessee had received the payments as an agent for representing as Development Authority or Special Planning Authority on behalf of the Government of Maharashtra. Therefore, the payments received by the assessee is not belongs to the assessee. Therefore, the TDS deducted on amount which is not the income of the assessee then whatever tax deducted as to be refunded to the assessee and which is belongs to the Government of Maharashtra. The Ld. DR raised the issue that this refund will be income of the assessee or how this amount will be handled by the assessee is not known. This apprehension may not be proper as the assessee received only commission income as their service charges and all other income

or money belong to the Government of Maharashtra and the payments never intended for the assessee. Therefore, we are inclined to accept the findings of Ld. CIT(A) and no reason to interfere with the conclusion arrived by Ld. CIT(A). Accordingly, grounds raised by the Revenue is dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 03/09/2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 03/09/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)

ITAT, Mumbai