

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES “E”, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No. 5796/MUM/2019  
Assessment Year: 2011-12**

M/s Stock Holding Corporation of India Ltd., Unit No. 301, 3 <sup>rd</sup> Floor, Peninsula Center Point, Opp. Bharat Mata Cinema, Dr. Babasaheb Ambedkar Road, Parel, Mumbai - 400012 PAN: AABCS1429B	<b>Vs.</b>	Dy. Commissioner of Income – tax, Range -8(2)(2), Room No. 615, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Akram Khan (AR)

Revenue by : Shri B K Bagchi (DR)

Date of Hearing : 11/12/2021

Date of Pronouncement: 05/01/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 28/06/2019 passed by the Ld. Commissioner of Income Tax (Appeals)-14, Mumbai [in short the Ld. CIT(A)] for assessment year 2011-12 raising following grounds:

- “1. The Commissioner of Income-tax (Appeals) erred in holding that the Appellant was not entitled to TDS credit aggregating to Rs. 2,55,60,477/- in the Assessment Year 2011-12.
2. The Commissioner of Income-tax (Appeals) erred in directing the Assessing Officer to withdraw TDS Credit of Rs. 46,44,433/-“

2. Briefly stated facts of the case are that:

(i) In the scrutiny assessment order under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer allowed credit of tax deducted at source (TDS) amounting to ₹ 13,37,98,519/-. According to the assessee, it was allowed short credit of TDS. On further appeal, the Ld. First Appellate Authority i.e. Ld. CIT(A) directed the Assessing Officer to verify and allow the credit of TDS as per provisions of law.

(ii) The Ld. Assessing Officer in order dated 07/08/2018, while giving effect to the order of the Ld. First Appellate Authority i.e. Ld. CIT(A) , restricted the credit of TDS to ₹ 15, 20, 64, 111/-, which was appearing in form No. 26AS for AY 2011-12 ( i.e. the form prescribed for providing statement of TDS to the assessee for the year under consideration as per section 203AA of the Act ) as against TDS credit of ₹ 17, 39, 68, 882/- claimed by the assessee. The assessee filed copy of TDS certificates amounting to Rs. 2, 64, 87, 104/- for claiming credit of remaining TDS.

(iii) Aggrieved with the order of the Assessing Officer (giving effect to the order of the Ld. First Appellate Authority), the assessee filed appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee claimed that as per Annual Tax Statement in form No. 26AS credit of ₹ 15,26,67,613/- is available and out of which amount of ₹ 52,48,263/- had been claimed by the assessee in preceding assessment year(s). It was further submitted that balance TDS credit of ₹ 2, 65, 49, 204/- is not reflected in form No. 26AS of current financial year, however original TDS certificate to the extent of ₹ 2,64,87,104/- were produced

before the Assessing Officer. Further, the detailed in respect of TDS claim amount of ₹ 2,65,49,204/- was submitted before the Ld. CIT(A) as under:

*“7. The Appellant has further submitted the following details in respect of balance amount of Rs. 2,65,49,204/- before the Assessing Officer:-*

- i) TDS credit of Rs. 2,55,60,477/- is reflecting in form 26AS of immediately succeeding assessment year 2012-13. Statement giving the TAN, Name of the parties and TDS amount was submitted before the Assessing Officer (page no. 16 of the compilation).*
  - ii) TDS credit of Rs. 4,11,945/- is not reflecting in the form 26AS of the assessment years. However, TDS certificate for the aforesaid amount were submitted before the Assessing Officer (page no. 21 of the compilation).*
  - iii) TDS credit of Rs. 3,79,119/- which was not reflecting in the form 26AS of AY 2011-12 is now reflecting in the updated form 26AS.*
  - iv) Balance difference of Rs. 1,97,663/- is irreconcilable.*
  - v) Indemnity bond signed by the Managing Director stating that the said TDS credit has been claimed in accordance with section 199 of the Income Tax Act, 1961, r.w.s. 37BA(3)(i) of the Income-tax Rules, 1962 and they have not claimed the TDS credit in any other assessment years (page no. 113 to 115 of the compilation).*
- 8) The Appellant has also submitted before the Assessing Officer that they have not claimed the credit of tax deducted at source while filing the Return of Income for AY 2012-13.*

*In view of the above, the Appellant submits that the Assessing Officer be directed to grant further credit of TDS to the extent of Rs. 2,19,04,771/- (TDS credit claimed in the Return of income Rs. 17,39,68,882/- less TDS credit granted vide order giving effect to the CIT(A) Rs. 15,20,64,111/-“*

4. The Ld. CIT(A) directed the Assessing Officer to allow credit as per the form No. 26AS for the year under consideration and withdraw the excess credit (credit of ₹ 52,48,263/- which had already been claimed by the assessee and allowed by the Ld. Assessing Officer in preceding years) allowed to the assessee. Relevant finding of the Ld. CIT(A) is reproduced as under:

*“I have considered the submission made by the appellant. The appellant has claimed credit for TDS amounting to Rs. 17,39,68,882/in the return of income. Total amount of TDS reflecting in form 26AS for the relevant assessment year is Rs. 15,26,67,613/out of which amount of Rs. 52,48,263/= has already been claimed by the appellant in the preceding assessment years. Thus, as against claim of credit for amount of Rs. 17,39,68,882/amount reflecting in form 26AS of the assessment year under consideration is Rs. 14,74,19,350/only and balance amount of Rs.2,65,49,532/-is not appearing in form 26 AS of the assessment year under consideration. The appellant has divided credit for this amount in various sub categories and allowability of the claim of the appellant is discussed as under:*

- 1. It is seen from the submission of the appellant that the appellant is seeking credit for TDS amounting to Rs. 2,55,60,477/which has been deducted by the deductees in the previous year relevant to A.Y. 2012 ~ 13 on the ground that corresponding income has been offered during the previous year under consideration by the appellant. I'm of the opinion that the plea of the appellant is not in accordance with the provisions of section 199(2) of the IT Act because this tax has not been paid to the credit of Central government in the previous year in which the appellant is seeking the credit. If credit is given to the appellant, the appellant would become entitled to interest on the amount even before the same has been paid to the government. Therefore, plea of the appellant is rejected. However, the appellant is entitled to credit for the same in the A.Y, 2012 — 13, even though the credit for the same has not been*

*claimed in the return of income filed by the appellant because the appellant could not have claimed credit for the same amount in two different assessment years.*

- 2. So far as credit for the amount of Rs. 4,11,945/~ which is not reflecting in form 26 AS of any assessment years, however, for which the TDS certificates have been submitted by the appellant is concerned, the AO is directed to get it verified as to whether the tax mentioned in the certificates has been actually paid by the deductees. If the tax has been paid by the deductees, the appellant is entitled to credit for the tax deducted at source even if credit is not appearing in form 26AS.*
- 3. So far as the credit for amount of Rs. 3,79,119/= is concerned, the appellant is entitled to credit for the same after verification of the correctness of the claim of the appellant in this regard.*
- 4. Regarding the credit for balance amount of Rs. 1,97,663/-, the appellant has not been given any proof, therefore, credit for the same cannot be given to the appellant.*

*Total of above mentioned amounts comes to Rs. 2,65,60,477 /-, however, the AO has already given credit for amount of Rs. 46,44,433/- to the appellant and only TDS credit to the extent of Rs. 2,19,04,771/- is remaining. The AO should verify as to how excess credit has been given to the appellant and withdraw the credit which has been wrongly granted to the appellant.”*

5. Before us, the assessee has challenged the finding of the Ld. CIT(A) of holding the assessee as not entitled for TDS credit aggregating ₹ 2,55,60,477/- in the impugned assessment year and also the direction of the Ld. CIT(A) of withdrawing TDS credit of ₹ 46,44,433/-.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute involving ground No. 1 (one) of the appeal, is of the assessment year in which credit of

tax deducted at source has to be given. In the case, before us the assessee has submitted a list of TDS certificates amounting to Rs. 2,64,87,104/- which is available on page 18 of the paperbook . The assessee has also enclosed a copy of all the TDS certificates amounting to ₹ 2,64,87,104/-, which are available from page 19 to 103 of the paperbook. On perusal of the TDS certificates, we find that one TDS certificate relates to either assessment year 2010-11, and the remaining certificates relates to assessment year 2011-12 i.e. the assessment year under consideration or assessment year 2012-13. The TDS certificates filed by the assessee had been issued mainly by the Government Organisation, Semi-government organization or Public Sector Undertakings and similar institutions . The assessee is seeking credit of TDS on the basis of these TDS certificates, whereas the Assessing Officer has allowed the credit on the basis of Form No. 26AS, which is a statement of deduction of tax at source prepared by the Income-tax Department in terms of section 203AA of the Act in respect of the tax deducted in the case of the assessee relevant to the assessment year under consideration i.e. AY 2011-12.

7. The section 199 under chapter XVII B of the Act, has prescribed provision for giving credit of TDS. The provisions of section 199 of the Act, as it existed prior to 01/04/2008 lays down that credit for TDS will be allowed in the assessment year in which income is assessable. The Tribunal, Chandigarh Bench (third member ) in the case of **Pradeep Kumar Dhir Vs ACIT (2007) 107 ITD 118** held that credit for TDS has to be given in the assessment year for which such income is assessable. The Tribunal laid down that the conditions for getting the benefit of the TDS as per section 199 of the Act are

that (i) the assessee should produce the TDS certificates (ii) show that income subjected to TDS is disclosed in return of income of the assessment year as “assessable”.

7.1 The section 199 of the Act however has been substituted by the Finance Act, 2008 with effect from 01/04/2008 and as per the substituted provisions, the credit has to be given as per the provisions made in the Income-tax Rules, 1962 (in short ‘the Rules’). In terms of, Rule 37BA the credit for tax deducted at source and paid to the central government shall be given for the assessment year for which such income is assessable. In case the income is assessable over a number of years, credit for tax deducted at source shall be allowed across the years in the same proportionate, in which the income is assessable to tax.

7.2 For ready reference, the relevant provision for credit of tax deducted at source during relevant period i.e. section 199 of the Act, is reproduced as under:

*“(1) Any deduction made in accordance with the foregoing 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 of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*

*(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.*

*(3) The Board may, for the purpose of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.”*

8. The relevant rule i.e. Rule 37BA in this respect is also reproduced for ready reference:

*“Credit for tax deducted at source for the purposes of section 199.*

*(1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.*

*(2) (i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*

*Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).*

*(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*

*(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody. (3) (i) Credit for tax*

*deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.*

*(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.*

*(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of –*

*(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority; and*

*(ii) the information in the return of income in respect of the claim for the credit subject to verification in accordance with the risk management strategy formulated by the Board from time to time.”*

9. The assessee has relied on the decision of the Pune Bench of Tribunal in the case of **M/s Mahesh Software Systems P. Ltd. in ITA No. 1288/PUN/2017** for assessment year 2011-12. In the said case the assessee raised bills of ₹ 84,10,000/- on M/s Ashoka Leyland on 28/03/2011 and recorded this invoice in assessment year 2011-12, whereas M/s Ashok Leyland though deducted the tax at source on the said bill, however deposited it with the exchequer in the month of April 2011. The Tribunal (supra) after analyzing section 199 and Rule 37BA concluded as under:

*“7. The AO has relied on sub-rule (1) of section 37BA for denying the benefit of TDS during the year under consideration. This part of the Rule provides that the credit for TDS shall be given to the person to whom payment has been made or credit has been given on the basis of information relating to TDS furnished by the deductor. What is*

*material for sub-rule (1) is the beneficiary of credit for the TDS, being the person to whom payment has been made, which in the instant case is the assessee. The ld. CIT(A) has, in addition, relied on sub-rule (4) of Rule 37BA, which again provides that the credit for TDS shall be granted on the basis of information relating to deduction of tax at source furnished by the deductor. How, this rule prejudices the claim of the assessee is anybody's guess. Obviously, the information about the TDS by Ashok Leyland is not denied. Both the sub-rules simply provide for granting of the benefit of TDS. The point of time at which the benefit of TDS is to be given, is governed by sub-rule (3) of Rule 37BA, which unequivocally provides through clause (i) that the 'credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable'. It is, ergo, abundantly clear from the mandate of Rule 37BA(3)(i) that the benefit of TDS is to be given for the assessment year for which the corresponding income is assessable. Since the income of Rs.84.10 lakh, on which tax of Rs.8,41,050/- was deducted at source, is patently assessable in the year under consideration, we hold that the benefit of the TDS should also be allowed in the same year, namely, the year under consideration. We, therefore, overturn the impugned order and direct accordingly."*

10. Thus, the Tribunal (supra) has held that the benefit of the TDS has to be allowed in the same year in which the income is assessable irrespective of the year in which tax has been deposited by the deductor.

11. Further, Tribunal Mumbai Bench in the case **M/s Greatship (India) Ltd in ITA No. 5562/Mum/2018 for assessment year 2015-16**, in identical circumstances, observed as under:

*“7. On the basis of our aforesaid deliberations, we are unable to subscribe to the view taken by the lower authorities that despite the fact that the sales/receipts were accounted for by the assessee during the year under consideration viz. A.Y 2015-16, the corresponding credit of TDS of Rs.45,41,995/- was not be allowed to it in the said year. In fact, we are unable to persuade ourselves to subscribe to the view taken by the lower authorities, that the credit for the tax deducted at source (TDS) was to be allowed to the assessee in the immediately succeeding year i.e A.Y 2016-17, despite the absence of the assessable income in the said year. Accordingly, we restore the matter to the file of the A.O, with a direction to allow the short/deficit credit of TDS of Rs.45,41,995/- to the assessee in the year under consideration i.e A.Y 2015-16. Before parting, we may herein observe, that the A.O before allowing the credit of the TDS of Rs. 45,41,995/- shall verify the veracity of the claim of the assessee that the sales/receipts corresponding to the TDS credit of Rs.45,41,995/- were accounted for by it during the year under consideration viz. A.Y. 2015-16. Also, as a word of caution, the A.O shall take necessary steps in order to ensure that no TDS credit of the aforesaid amount of Rs. 45,41,995/- is/was availed by the assessee in the immediately succeeding year i.e A.Y 2016-17 in which the same is reflected in its “Form 26AS”.*

12. In view of above precedents, we summarise the position of law on the issue that during relevant period Credit for TDS has to be allowed in the assessment year, in which the corresponding income is assessable. It is not relevant in which financial year, the tax has been deposited in Govt. account or in which year TDS certificate has been issued. The relevant thing which has to be verified is for which year the deductor has credited the income to the assessee in the TDS certificate issued and if the income is credited for relevant

assessment year then TDS credit has to be allowed even if said TDS credit is appearing in Form No. 26AS in next assessment year.

13. When we analyze the facts of the instant case in above legal background, we find that the TDS certificates under reference filed by the assessee before the Ld. Assessing Officer can be divided in three categories. First category, where the TDS has been deducted by the deductor for assessment year 2010-11. One TDS certificate, available on page 30-31 of the paperbook, falls in this category. In this TDS certificate, date of credit or payment is not mentioned and only date of deposit of TDS of Rs. 26,956 and Rs. 34,072 in Government Account is mentioned as on 05/03/2010 and 05/04/2010 respectively. In the circumstances, it needs verification as to in which year the corresponding income was assessable in the hands of the assessee.

14. As far as second category of TDS certificates are concerned, we find that in those certificates income has been credited or paid to the assessee in the assessment year under consideration and tax has also been deducted in assessment year under consideration i.e. AY 2011-12, however same has been deposited in subsequent assessment year i.e. AY 2012-13. If the income corresponding to the TDS is assessable in the year under consideration, then the assessee is eligible for credit of TDS in the year under consideration, irrespective of the year in which TDS was deposited by the deductor. For example, TDS certificate available on page 35 of the paperbook, wherein amount of ₹ 5, 04, 345/- has been credited in the account of the assessee on 31/03/2011, however tax has been deposited in government account on 24/05/2011. In such category of TDS certificates, following the finding of the

Tribunal in the case of **Mahesh Software Systems Private Limited (supra)** , the corresponding income is assessable in assessment year under consideration i.e. AY 2011-12. The section 205 of the Act also support this view. According to the section 205 of the Act, where tax is deductible at the source under the provisions of the act, the assessee shall not be called upon to pay tax himself to the extent to which tax has been deducted from that income. Thus, in order to call bar of section 205 into operation, it is necessary to establish the tax has in fact deducted at source and credit of the tax deducted at source must be granted to the payee, even if the payer or deductor has not deposited the tax into Government Account.

15. The third category of TDS certificates, where income has been credited or paid by the deductor in financial year corresponding to assessment year 2012-13 and tax has also been deducted in the financial year corresponding to assessment year 2012-13. In those cases, the deductor has credited the income to the assessee for assessment year 2012-13, whereas assessee has claiming the credit of said TDS in assessment year 2011-12. We do not understand as how and on what basis the assessee has credited the income corresponding to those TDS certificate in the year under consideration. No documentary evidence in this regard as the corresponding income is assessable or capable of being assessed in the year under consideration, have been filed before lower authorities or before us and therefore onus is on the assessee to establish that said income corresponding to those TDS certificate was assessable in the year under consideration.

16. In view of our finding above, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the issue of verification of TDS certificates amounting to ₹ 2,64,87,104 as to in which assessment year income corresponding to the TDS is assessable and allow credit accordingly. For verification of the assessment year in which income is 'assessable', the Assessing Officer may carry out the inquiries which he deems fit in the circumstances including verifying the previous year relevant to the assessment year in which corresponding bills/invoices are issued by the assessee, the previous year in which services corresponding to bills issued were rendered, when the entries of such bills / invoices were made in the books of accounts of the assessee , the previous year in which such bills/invoices were sent to the TDS deductor etc. We have also noticed difference in amount of TDS credit denied by the Ld. AO and amount challenged in Ground No. 2 of the appeal. The Assessing Officer shall reconcile those amounts and ensure that if credit of particular TDS amount is allowed in the year under consideration, than no credit of said TDS is allowed in any other assessment years. It is the responsibility of the assessee also not to claim the same TDS twice. The ground No. 1 of the appeal of the assessee, is accordingly allowed for statistical purposes.

17. As far as ground No. 2 of the appeal is concerned, we are of the opinion that in ground No. 1 of the appeal, the assessee itself is claiming for allowing credit on the basis of the year in which income is assessed. The claim of the assessee in ground No.2 is in contradiction with the claim of the assessee in ground No. one of the appeal. When, the assessee has already claimed TDS

credit corresponding the income offered in preceding years, though same is appearing in form No. 26AS of the year under consideration, the assessee is not entitled for credit of TDS to that extent. We accordingly, uphold the finding of the Ld. CIT(A) of withdrawing the credit of the TDS amount, credit of which has already been availed by the assessee in preceding assessment years. The ground No.2 of the appeal of the assessee is accordingly dismissed.

18. In the result, the appeal of the assessee is partly allowed for statistical purposes.

19. In the result, the appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 5<sup>th</sup> January, 2022.

*Sd/-*

(AMARJIT SINGH)  
JUDICIAL MEMBER

*Sd/-*

(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 05/01/2022

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**