

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.1735/Del/2021
Assessment Year: 2016-17

Sh. Manish Tandon, Flat No. 201, Tower 8, Nirwana Country, The Close South, Gurugram	Vs.	Income Tax Officer, Ward-2(4), Gurgaon
PAN :AEFPT0453B		
(Appellant)		(Respondent)

Appellant by	Sh. D.C. Garg, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing	31.05.2022
Date of pronouncement	24.06.2022

ORDER

This is an appeal by the assessee against order dated 01.11.2021 passed by National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2016-17.

2. As could be seen from the grounds raised, the basic grievance of the assessee is against non-grant of credit of Tax Deducted at Source (TDS) amounting to Rs.7,92,054/-.

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his return of

income on 31.03.2017 declaring total income of Rs.45,54,400/-. In the return income so filed, the assessee claimed credit of TDS for an amount of Rs.12,14,720/-. While processing the return of income of the assessee under section 143(1) of the Income-tax Act, 1961 (for short 'the Act'), the Centralized Processing Centre (CPC) allowed credit of TDS for an amount of Rs.4,22,666/-, as, the TDS claimed by the assessee was not consistent with the TDS credit appearing in Form 26AS. Against the intimation issued under section 143(1) of the Act, the assessee preferred an appeal before learned Commissioner (Appeals). After considering the submission of the assessee and verifying materials on record, learned Commissioner (Appeals) observed that there was mismatch between TDS credit claimed in return of income and TDS credit appearing in Form 26AS. He observed, until and unless the tax deducted is remitted to the Government account, credit for TDS cannot be given. He observed, the assessee failed to furnish any challan or any other evidences to demonstrate that the TDS claimed was remitted to the Government account. Accordingly, he rejected assessee's claim for grant of TDS.

4. Learned counsel for the assessee submitted, the assessee was employed with a company viz. M/s. Amira Pure Foods Pvt. Ltd. as

Executive Director. He submitted, as an employer M/s. Amira Pure Foods Pvt. Ltd. deducted tax at source on the salary paid to the assessee. He submitted, for the year under consideration, the employer deducted tax at source for an amount of Rs.12,14,720/- . In this context, he drew my attention to a copy of salary and TDS sheet as well as monthly pay slips placed in the paper-book. He submitted, once TDS was deducted from the salary of the assessee by his employer, credit for such TDS has to be given to the assessee irrespective of the fact, whether the deductor has remitted the TDS amount to the Government account or not. He submitted, in such circumstances, the assessee cannot be called upon to pay the tax liability to the extent of tax deducted at source. In this context, he drew my attention to section 205 of the Act. He submitted, before the departmental authorities, the assessee has furnished monthly salary slips and TDS sheet, copy of bank statement to demonstrate that an amount of Rs.12,14,720/- was deducted at source by the employer. Thus, he submitted, the assessee is entitled to get credit for the tax deducted at source. In support of his contention, he relied upon the following decisions:

1. *Pushkar Prabhat Chandra Jain Vs. Union of India (Writ Petition No. 90 of 2019, dated 30th January, 2019)*

2. *Kartik Vijaysingh Sonavane Vs. Dy. CIT (R/Special Civil Application No. 6193 of 2021, dated 15th November, 2021)*

5. Strongly relying upon the observations of learned Commissioner (Appeals), learned Departmental Representative submitted, neither the assessee was able to furnish any TDS certificate issued by the employer, nor any other authentic documentary evidence to demonstrate that the impugned claim towards TDS was actually deducted by the employer. Thus, he submitted, in absence of any supporting evidences, assessee's claim was rightly rejected.

6. I have considered rival submissions in the light of the decisions relied upon and perused materials on record.

7. As could be seen from the facts on record, the assessee works as an employee of a company in the name and style of M/s. Amira Pure Foods Pvt. Ltd. On the salary paid to the assessee, the employer has deducted tax at source. The dispute between the assessee and the Revenue is limited to the quantum of TDS for which credit can be given. While the assessee has claimed credit of TDS for an amount of Rs.12,14,720/-, based on the figure mentioned in Form 26AS the Revenue has allowed credit of TDS for

an amount of Rs.4,22,666/-. The stand of the Revenue is, credit for TDS can be given only to the extent of the amount remitted to the account of the Central Government. Whereas, it is the contention of the assessee that he is entitled to claim TDS for the amount deducted by the employer, irrespective of the fact, whether such amount was remitted to the Government account or not.

8. Before I proceed to decide the issue, it is necessary to look into the relevant provisions providing for TDS and credit for TDS. As per section 192 of the Act, a person responsible for paying any income in the nature of salary shall have to deduct tax at source at the prescribed rate while making such payment. The provision also applies to perquisites paid to the employees. Section 199 of the Act provides that the TDS deducted 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. In other words, as per the aforesaid provision, TDS has to be regarded as tax paid by the person whose income has been subjected to TDS. Section 200 of the Act mandates that the person deducting tax at source has to pay/remit such tax to the account of Central Government within the prescribed time. Section 201 of the Act speaks out the consequences on failure to deduct tax at source or

having deducted tax not paying to the Government account. As per section 201, in case of any default committed in respect of deduction of tax at source and payment to Government account, a person is liable to pay such tax along with interest to the Government. Section 203 of the Act casts obligation on the deductor to issue certificate to the deductee specifying the amount of tax deducted, the rate at which tax has been deducted and any other particulars specified therein. Section 205 of the Act which has been heavily relied upon by the assessee reads as under:

“Bar against direct demand on assessee.

205. *Where tax is deductible at the source under the foregoing provisions of this Chapter, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.”*

9. A reading of the aforesaid provision makes it clear that where tax is deductible at source under the various TDS provisions contained in Chapter XVIII, the assessee shall not be called upon to pay the tax himself to the extent of which tax has been deducted from that income.

10. Keeping in perspective the statutory provisions, as discussed above, if we examine the facts of the present appeal, it has to be seen that, though, the assessee has claimed TDS for an amount of

Rs.12,14,720/-, however, the department has disputed the claim of the assessee, since, an amount of Rs. 4,22,666/- as reflected in Form 26AS, has been remitted to the account of the Central Government. From the salary and TDS sheet stated to have been issued by the employer, a copy of which is placed in the paper-book and the salary slips, though, it appears that the employer has deducted an amount of Rs.12,14,720/-, however, the authenticity of these documents have been doubted by the Revenue as they do not bear any seal or signature of the employer. It is also a fact on record that the assessee, at no stage, has been able to furnish any TDS certificate issued by the employer in terms with section 203 of the Act. The provisions of section 205 can get triggered only when it is established on record that the deductor has deducted tax at source but has failed to remit to the Government Account. In the facts of the present appeal, quantum of tax deducted at source by the employer is in doubt, as, neither any TDS certificate issued by the employer in terms with section 203 of the Act, nor any other authentic corroborative evidence has been furnished by the assessee to demonstrate deduction of tax at source to the extent claimed in the return of income.

11. At the same time, I must observe, the assessee has furnished salary slips, bank statement, salary and TDS sheet etc. to prove that an amount of Rs.12,14,720/- was deducted at source towards tax from the salary paid. If the Revenue was entertaining any doubt on the evidences furnished, the minimum which could have been done was to conduct an inquiry with the employer to ascertain the correct facts. As it appears, no such inquiry was ever conducted in respect of the employer to ascertain his compliance with the TDS provisions. In the decisions cited before us by learned counsel for the assessee, the Hon'ble High Courts have held that if tax has been deducted at source by the deductor but was not remitted to the account of the Central Government, the assessee cannot be called upon to pay such tax in view of section 205 of the Act.

12. In view of the aforesaid, I restore the matter back to the file of the Assessing Officer with a direction to make inquiry with the employer and factually verify the quantum of tax deducted at source on payment of salary to the assessee. In case, it is found that the employer has deducted the amount as claimed by the assessee in terms with section 205 of the Act, credit has to be given for the full amount of tax deducted at source, irrespective of the

fact, whether it was remitted to the account of the Central Government or not.

13. In the result, the appeal is allowed for statistical purpose, as indicated above.

Order pronounced in the open court on 24th June, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 24th June, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi