

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

SHRI SANJAY GARG, JUDICIAL MEMBER

**ITA No.6147/Del/2018
Assessment Year : 2014-15**

Active promoters Private Limited, 306-308, Square One, C-2, District Centre Saket, New Delhi-110017	vs	Income Tax Officer, Ward-1(3), New Delhi
PAN-AAECA9956G		
APPELLANT		RESPONDENT

Appellant by	Sh. Arta Trana Panda, Adv.
Respondent by	Sh. Sanjay Kumar, Sr. DR
Date of Hearing	23.06.2022
Date of Pronouncement	23.06.2022

ORDER

This present appeal has been preferred by the assessee against the order dated 26.07.2018 of the Commissioner of Income Tax (Appeals)-32, New Delhi [hereinafter referred to as CIT(A)] pertaining to AY 2014-15.

2. The assessee in this case has taken following grounds of appeal:-

“Ground No. 1:

The Ld. Commissioner of Income Tax (Appeals) - 32, New Delhi (hereinafter referred to as 'CIT(A')) has erred on facts and in law in passing the order dated 26-07-2018 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act').

Ground No. 2:

The Ld. CIT(A) has grossly erred both in law and on fact in holding that the Learned Assessing Officer is correct in disallowing the Tax credit amounting to Rs^23,71,746/- from the tax liability, despite the fact that such TDS is being

deducted on the payment made to the appellant and is duly accounted in its Form 26AS however, merely the income does not belong to the appellant, does not disentitle the appellant to claim the TDS credit.

Ground No. 3

The Ld. CIT(A) has further erred in not providing the manner to claim the tax credit reflecting in the form 26AS of the appellant by another assessee as per Rule 37BA of the Income Tax Rules, 1962. Moreover, there is a practical hinderance in claiming such TDS by any assessee to whom the income pertains as TDS credit is in the name & PAN of the Appellant.”

Additional/Alternate ground:

Apart from the above Grounds of the appeal, the assessee, alternatively has pleaded that the credit of the TDS may be granted to the other person i.e. Emaar MGF Land Ltd. In whose hands, the income has been assessed.

3. The brief facts of the case are that the assessee company is a subsidiary of Shrey Promoters Pvt. Ltd., which in turn is subsidiary of Emaar MGF Land Ltd. In this way, Emaar MGF Land Ltd. is the parent company of the assessee company.

The assessee purchased a land in collaboration with Emaar MGF Land Ltd., which was subsequently acquired by Haryana Urban Development Authority, whereupon a compensation of an amount of Rs.2,37,17,460/- was paid by the HUDA to the assessee on which TDS of Rs.23,71,746/- was deducted. The assessee had entered into collaboration/agreement with Emaar MGF Land Ltd.. As per the terms of the said agreement, it was agreed that on account of sale of land, the loss, if any, that will be borne by the said parent company Emaar MGF Land Ltd. Similarly, Emaar MGF

Land Ltd. will be entitled to the profit, if any, on the acquisition/sale of the land. In view of the said agreement, the assessee company passed on the entire compensation amounting to Rs.2,37,17,460/- to the said Emaar MGF Land Ltd. However, the assessee itself made the claim of the TDS deducted by HUDA as it was reflected in Form 26AS in the name of the assessee. The AO denied the claim of the TDS credit on the ground that the income from the said compensation had gone to the said Emaar MGF Land Ltd. and not to the assessee. He referring to the provisions of section 199 of the Income Tax Act r.w.r 37BA(2) of the Income Tax Rules held that since the income was assessable in the hands of the other person namely Emaar MGF Land Ltd., therefore, the assessee was not entitled to claim the benefit of TDS credits.

4. The Ld. CIT(A) upheld the action of the AO.

5. Being aggrieved, the assessee is in appeal before this Tribunal.

6. I have considered the rival contention and gone through the record. Before proceeding further, it will be relevant to reproduce the relevant portion of section 199 of the Act and also Rule 37BA(2) of the Income Tax Rules:-

“199. (1) 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, 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 purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules⁵⁴ 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.”

Income Tax Rule 37BA

“ (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.”

7. A perusal of the section 199 of the Act r.w.r. 37BA(2) would show that any sum paid by the deductor to the Central Government on behalf of the deductor will be considered as tax paid on behalf of the deductee. Sub Rule (2) of Rule 37BA states that 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 subject to the fulfilment of conditions as mentioned above.

In this case, the income on account of compensation paid to the assessee has been assessed in the hands of Emaar MGF Land Ltd. because of the subsequent contract of the assessee with Emaar MGF Ltd. whereby, the said Emaar MGF Land Ltd. had indemnified the assessee on account of loss, if any, and it was also agreed that the benefit, if any, will be passed on to the said Emaar MGF Land Ltd. on sale/acquisition of the said land. The case of the assessee is that the said Emaar MGF Land Ltd. has already accounted for the entire compensation in its return of income and has not claimed the TDS thereupon. In view of this, it is directed that the said Emaar MGF Land Ltd will be entitled to the benefit of claim of TDS subject

to the verification by the Assessing Officer that the entire compensation including TDS amount has already been taken into account by the said Emaar MGF Land Ltd. in its return of income and has paid the due taxes. If the aforesaid TDS amount has not been accounted for by the said Emaar MGF Land Ltd in its return of Income for the assessment year under consideration, it shall be entitled to file a revised return including the aforesaid TDS amount in its income and claim TDS credits thereupon accordingly and the Assessing Officer after verification shall allow the tax credits accordingly. Subject to the above observation, the appeal of the assessee is treated as allowed on the alternate ground.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 23.06.2022.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Delhi;

Dated: 23/06/2022.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI