

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

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Anubhav Sharma, Judicial Member

ITA No. 305/Del/2020 : Asstt. Year : 2017-18

Vinay Kumar Jain, BJ-97, Shalimar Bagh, West North Delhi, New Delhi-110088	Vs	DCIT, CPC, Bangalore-560500
(APPELLANT)		(RESPONDENT)
PAN No. ADVPJ5941P		

**Assessee by : Sh. Narender Arora, CA
Revenue by : Sh. M. Baranwal, Sr. DR**

Date of Hearing: 12.07.2022	Date of Pronouncement: 15.07.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Delhi-16 dated 22.11.2019.

2. Heard the arguments of both the parties and perused the material available on record.

3. The brief facts of the case the assessee e-filed return of income on 27.07.2017 u/s 139(1) of the Act declaring income of Rs.68,97,380/-. Notices u/s 143(l)(a) of the IT ct dated 06.06.2018 and 16.03.2019 were issued to the assessee proposing adjustment to the returned income on account of higher income reflected in Form 26AS. Thereafter, the assessee was issued notice u/s 139(9) of the Act requiring the assessee to rectify the defects in the return of income. Thereafter, the

CPC, Bangalore processed the original return of income and intimation order dated 27.03.2019 was passed u/s 143(1) of the Act against which the assessee filed rectification application u/s 154 of the Act. Thereafter, the CPC, Bangalore passed the rectification order u/s 154 of the Act on 25.06.2019 assessing income at Rs.70,07,630/- by making net addition of Rs. 1,10,252/- under the head 'other sources' being difference on account of gross income amounting to Rs.58,06,822/- declared under the head other sources and gross income of Rs.59,17,074/- reflected in Form 26AS.

4. The assessee submitted before the Id. CIT(A) that the income of Rs. 1,29,600/- shown by National Collateral Management Services Ltd with TDS deduction of Rs.12,960/- does not pertain to the assessee assessee and the same cannot be considered as the income of the assessee. The Id. CIT(A) declined to interfere with the order of the CPC on the grounds that a bald statement of denial of receipt of income is not acceptable in a court of law. The Id. CIT(A) held that the assessee could not substantiate his claim by producing any cogent evidence but it appears to be a blatant attempt to escape tax liability as the assessee clearly has no evidence to rebut the contents of Form 26AS which is in possession of the Revenue authorities. The Id. CIT(A) relied on the provisions of Section 114(g) of the Indian Evidence Act clearly states as under:

"Section 114(g) in the Indian Evidence Act, 1872

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

5. Aggrieved the assessee filed appeal before the Tribunal.

6. Before us, the Id. AR of the assessee relied on the contention taken up before the Id. CIT(A). It reads

"The Id. AR contended that the appellant received a communication dated 16.03.2019 intimating error in the return of income in as much as the income declared as per ITR is lower than the income reported in Form 26AS showing difference of Rs.1,10,252/-. The appellant in reply to the intimation submitted an online reply stating that the income of Rs. 1,29,600/- shown by National Collateral Management Services Ltd with TDS deduction of Rs.12,960/- does not pertain to the appellant assessee. However, despite clarification given, the CPC passed an intimation u/s 143(1) of IT Act dated 27.03.2019 where the income from other sources was enhanced by Rs.1,10,252/- and as a result thereof a demand of Rs.34,070/- was raised. The AR vehemently contended that as the appellant was not in receipt of any income from National collateral Management Services Ltd, the AO's reliance on Form 26AS which showed a receipt of the said income is erroneous. The AR submitted that the AO should have made independent inquiries before making the said adjustment.

The Id. AR filed an affidavit of the appellant deposing that he has not entered, into any transactions with National Collateral Management Services Ltd, nor received funds/income from the said party."

7. The claim of the assessee was examined. It is not denied that Form 26AS of the assessee reflects details of the following income received against which TDS has been made. The income reported by him in the ITR and the variation of the reported income in Form 26AS. The table below shows the reconciliation of the income as per ITR and income reported in Form 26AS:

<i>Particulars</i>	<i>Income as per ITR</i>	<i>Income as per Form 26AS</i>	<i>Difference/Remarks</i>
<i>Interest Income Jain Rice Land P Ltd</i>	<i>2,76,957</i>	<i>2,76,957</i>	<i>No difference</i>
<i>Mahaveera Rice World</i>	<i>3,28,189</i>	<i>3,28,189</i>	<i>No difference</i>
<i>TPDDL</i>	<i>49,080</i>	<i>49,0,80</i>	<i>No difference</i>
<i>VAM Realcon P Ltd</i>	<i>51,33,248</i>	<i>51,33,248</i>	<i>No difference</i>
<i>Saving Bank Interest</i>	<i>19,348</i>	<i>Nil</i>	<i>Difference is because TDS is not required to be deducted on saving bank Interest</i>
<i>Professional Income National Collateral Management Services Ltd</i>	<i>Nil</i>	<i>1,29,600</i>	<i>Difference is because of wrong filling of TDS information by the above deductor</i>
<i>Total</i>	<i>58,06,822</i>	<i>59,17,074</i>	

8. From the above table and from the details given above, it is evident that the only reasons for making adjustment to the returned income is that there appears income of Rs.1,29,600/- under the head professional income from National Collateral Management Services Ltd against which TDS of Rs. 12,960/- has been deducted u/s 194J. The assessee has denied having received such income and on that ground the assessee has also not claimed above TDS of Rs. 12,960/-. This fact can be verified from computation of income.

9. It is also relevant to note that although income shown in Form 26AS is Rs. 1,29,600/- which as per CPC not declared by the assessee but adjustment of Rs.1,10,252/- has been made and this may be because of the fact that the assessee t has declared income of Rs.58,06,822/- under the head income from

other sources which include saving bank interest of Rs. 19,348/- and because of this item of income on which TDS not required to be deducted u/s 194A of IT Act and it appears that the CPC has not considered these fact while working out difference of Rs.1,10,252/- against the correct difference of Rs.1,29,600/-.

10. The assessee now challenges the basis of Form 26AS adopted by the CPC ignoring the denial of assessee that he has not received any such income from the above named party i.e. National Collateral Management Services Ltd. The assessee seeks to place reliance on the bank statement which will show that no such amount has been received by the assessee from above named deductor.

11. In attempting to rebut this alleged receipt, the assessee has claimed that he has not reflected this amount in his bank accounts or in his books. He has also not claimed TDS deducted by National collateral management Services.

12. We hold that reflecting of TDS in Form 26AS doesn't necessarily reflect the income of the assessee unless it has been proved by the revenue by any evidence. The assessee has filed an affidavit, there is no credit in the bank account, the TDS has never been claimed, no enquiry has been conducted by the revenue with National Collateral Management Services Ltd. to prove that the assessee is in receipt of Rs.1,29,600/-. The Id. CIT(A)'s observation that the assessee could not provide any evidence to rebut the allegation and adjustment of the CPC cannot be upheld as **it is impossible for the assessee to prove with any evidence that he was not in receipt of any money.** The assessee is not expected to prove a negative, rather the primary

onus is on the revenue to demonstrate that the assessee is indeed in receipt of money instead of merely relying on the Form 26AS, especially when the assessee has filed his bank statement and a sworn affidavit declaring that he has not received any money from National collateral management Services Ltd.

13. Considering the entire facts of the case, we hereby allow the appeal of the assessee.

Order Pronounced in the Open Court on 15/07/2022.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 15/07/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR