

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.268/Bang/2022
Assessment Year: 2018-19

Abarna & Ananthan Chartered Accountants #521, 3 rd Main, 6 th Block, 2 nd Phase, BSK 3 rd Stage Bangalore 560 085 PAN NO : AABFA6041N	Vs.	Deputy Commissioner of Income-tax (CPC) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Ananthan, A.R.
Respondent by	:	Shri Srinivas Rao Bandaru, D.R.

Date of Hearing	:	14.07.2022
Date of Pronouncement	:	14.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 1.11.2021. The assessee has raised grounds with regard to direction of Ld. CIT(A) to AO to examine the form No.26AS with regard to granting of TDS credit.

2. Facts of the issue are that the only issue involved in this appeal is that the assessee had claimed TDS credit of Rs. 46,52,285/- in its return of income. During the course of processing of this return u/s 143(1), a notice u/s 139(9) dated

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04.06.2019 was issued to the assessee by CPC holding the return filed by the assessee to be defective. As per the said notice, the assessee had claimed credit for TDS, but the corresponding receipts / income had been omitted to be offered for taxation. The above omission was a defect as per clause (a) of the explanation to Section 139(9). On the other hand, the assessee's claim is that it had correctly declared its gross profit from profession of Rs. 3,78,91,947/- and had correctly claimed the TDS of Rs. 46,52,284/-. However, as per the intimation u/s 143(1) dated 10.12.2019, the credit for TDS was restricted to Rs. 38,12,470/- without giving the assessee an opportunity of being heard.

3. According to Ld. CIT(A), in the absence of the full facts of the case, it is not clear from the order u/s 143(1) passed by the CPC dated 10.12.2019 as to the reasons why the assessee's claim of TDS credit of Rs. 46,52,284/- was restricted to Rs. 38,12,470/- the Ld. CIT(A) directed the AO to examine the assessee's contentions alongwith all relevant facts and thereafter allow or disallow the assessee's claim of TDS as per the relevant provisions of I.T Act.

4. Against this assessee is in appeal before us. The Ld. A.R. submitted that Ld. CIT(A) ought not to have remitted the issue to the AO to examine the issue so as to grant TDS credit instead, he should have given direction to give credit of full amount of TDS shown in form No.26AS at Rs.46,52,284/- as against the AO action of restricting it to the tune of Rs.38,12,470/-.

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5. We have heard the rival submissions and perused the materials available on record. In this case, form No.26AS filed by the assessee along with return shown at Rs.46,52,284/-. According to the CPC, tax credit claimed by assessee in return of income not matched with form 26AS at the time of processing of return in the assessment year under consideration, the difference was to the tune of Rs.8,39,814/- and to that extent no tax credit has been given. According to the assessee, the total amount reflected in form No.26AS was at Rs.46,52,284/- and AO gave only credit to the tune of Rs.38,12,470/-.He submitted that this credit to be given full amount as shown in form 26AS. For this purpose, he relied on the order of the Tribunal in the case of TVS Auto Assist (India) Ltd. Vs. ACIT (2022) TMI 1375 ITAT Chennai and Zelan Projects Pvt. Ltd. Vs. DCIT 30 ITR (Trib) 41 (Hyd). In the above decisions, it was held that u/s 199(1) of the Act, once the TDS was deducted credit of the same is to be given to the assessee irrespective of the year to which it relates. Hence, the Tribunal directed the AO to allow the TDS credit as per form No.26AS after verification of the TDS certificate. Hence, coordinate bench in the case of Hushachiguru Enterprises Pvt. Ltd. In ITA No.287/Bang/2020 dated 5.1.22 wherein it was held as under:-

“14. We have heard both the parties and perused the materials on record. The assessee in the present case offered an amount of Rs.88,66,500/- as income out of an amount of Rs.1,95,77,290/- mentioned in the Form No.26AS. However, the assessee claimed TDS benefit to the full extent Rs.3,91,546/-, which is relating to the total amount of Rs.1,95,77,290/- mentioned in the Form No.26AS. The AO added balance amount of Rs.1,07,10,790/- as income mentioned in the Form No.26AS observing that as per principle, entire amount covered in From No.26AS has to be taxed, as the assessee has claimed entire amount of tax as credit mentioned in From No.26AS. In our opinion, the assessee has followed accrual system of accounting and offered the income as and when it was accrued to the assessee. The lower authorities misconstrued the distinction between the recognition of income on the basis of the

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accounting on accrual of income and cash system of accounting. In fact, the income accrued to the assessee only on the recognition of the income, which is based on the raising of bills. Therefore, it is not possible to hold that the assessee has deviated from the regular method of accounting followed by it. We should notice that the distinction between raising of bills and accounting of receipt. In our opinion, the receipts of money relating to the deduction of TDS by the payer, the assessee has to account the actual amount accrued to the assessee and balance portion which is not accrued to the assessee to be treated as receipt of advance and the receipt of advance subject to the TDS not to be offered for taxation in this asst. year and that portion of the TDS would not be allowed to claim the credit in terms of provisions of sec. 198 and 199 of the Act and the income covering that TDS has not been accrued to the assessee as a result of the method of accounting employed by the assessee. The credit for that TDS portion would be carry forwarded and assessee would get the credit for that TDS certificate in the year in which corresponding receipts were offered to tax on the basis of method of accounting regularly employed by the assessee. With these observations, we remit this issue to the file of the AO to decide the issue in dispute in the light of the above findings. This ground of appeal of the assessee is partly allowed for statistical purposes.”

5. In view of the above decision, we are inclined to remit the issue to the file of AO to give credit in accordance with section 199 r.w.s. Rule 37BA of Income Tax Rules, 1962.

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

Order pronounced in the open court on 14th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 14th Jul, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**