

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.166/SRT/2021

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Virtual Court Hearing)

Nimeshkumar Kamleshbhai Thakkar, 4 Swastik Flats, Nr. Ambika Niketan Mandir, Athwalines, Surat-395007	Vs.	Deputy Commissioner of Income Tax, CPC, Bangalore Post Bag No.2, Electronic City Post Office, Bangalore
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACMPT 0073 E		
(Appellant)		(Respondent)

Assessee by : Shri Sapnesh R Seth, C.A

Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाईकीतारीख/ **Date of Hearing** : 06/07/2022

घोषणाकीतारीख/**Date of Pronouncement**: 25/07/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2012-13, is directed against the order passed by the Learned National Faceless Appeal Centre (NFAC)/ Ld.CIT(A) dated 03.08.2021, which in turn arises out of assessment order passed by the Assessing Officer ('AO' for short) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 29.03.2017.

2. Grounds of appeal raised by the assessee are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in passing order on the basis of submissions made in statement of facts without sending notice of hearing on the email id. Mentioned in Form 35.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of Deputy Commission er of Income Tax (CPC) in allowing less credit on account of tax

deducted at source to the extent of Rs.4,79,052/- by passing order u/s 154 of the I.T. Act 1961.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of Deputy Commissioner of Income Tax (CPC) in charging interest u/s 234A, 234B and 234C of the I.T. Act.

4. It is therefore prayed that less allowance of tax deducted at source by Deputy Commissioner of Income Tax (CPC) and confirmed by Commissioner of Income-tax (Appeals), NFAC may please be deleted.”

3. At the outset, Ld. Counsel for the assessee submitted that assessee has not been granted benefit of Tax Deducted at Sources (TDS), which was deducted by the National Insurance Corporation Ltd (“NICL” for short) from the commission amount paid to the assessee. The Ld. Counsel for the assessee contended that assessee has filed rectification application u/s 154 of the Act, requesting the CPC Bengaluru to allow the credit on account of TDS. However, the Assessing Officer did not allow the credit of TDS and therefore assessee has filed further appeal before Ld.NFAC/Ld. CIT(A), who has confirmed the stand taken by Assessing Officer (CPC Bengaluru). The Ld. Counsel for the assessee further submitted that assessee has valid TDS certificate issued by NICL on account of commission paid to assessee. Therefore, assessee is entitled to take credit of TDS deducted by NICL and therefore the TDS credit should be allowed to assessee.

4. On the other hand, Ld. Sr.DR for the Revenue submitted that this is a case for reconciliation of TDS amount which is not reflected in Form No.26AS. The Ld. Sr.DR argued that if the TDS is not getting reflected in Form No.26AS then Assessing Officer does not have power to allow the credit of TDS, based on the certificate only. However, this issue may be remitted back to the file of Assessing Officer with the direction to examine the TDS certificate and also to examine the FormNo.26AS. The ld DR also stated that it may also be possible that National Insurance Corporation Ltd (“NICL” for short) might have revised its TDS return, therefore, the assessing officer should examine this aspect also.

5. We have heard both the parties and perused the materials available on record. The Id Counsel submits that assessee has claimed TDS amounting to Rs.4,83,295/- at the time of filing his return of income and the same was not fully allowed at the time of processing of return of income u/s 143(1) of the Act. That is, the assessee was not allowed TDS credit to the tune of Rs.4,79,052/-. We note that difference in TDS appears to be on account of TDS certificate issued to assessee by National Insurance Co. Ltd. from the commission amount paid to assessee and the amount of TDS reflected in Form No.26AS. It is possible that later on, NICL might have revised its TDS returns and reduced TDS credit of assessee. We note that assessee has fully offered commission income for taxation, as received by him from NICL and he had also received valid TDS certificates from NICL against the commission income so offered by him. Thus, assessee is justified in claiming TDS credit of Rs.4,79,052/- as assessee has offered income for the same.

6. However, at this stage we cannot ascertain the fact that why the TDS credit was not allowed to the assessee, as we have pointed out that NICL might have revised its TDS return, that is way, the exact amount of TDS is not getting reflected in Form No.26AS. However, without verifying the real facts, such disallowance of TDS credit must not be made, as income has been duly offered by the assessee, and if TDS credit is disallowed in that case the corresponding income shown by assessee also ought to have been reduced by passing rectification order u/s 154 of the Act. That is, the right income should be taxable in the hands of the assessee.

7. Alternatively, the assessing officer should examine Form No. 26AS and TDS certificate of assessee and revised TDS return of TDS of NICL and adjudicate the issue afresh in accordance with law. In this alternative also, we make it clear that if TDS credit is disallowed in that circumstances the corresponding income offered by the assessee for taxation also ought to have been reduced by passing rectification order u/s 154 of the Act by the assessing officer.

8. In the result, assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced on 25/07/2022 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat/ दिनांक/ Date: 25/07/2022

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat