

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.8910/Del./2019
(ASSESSMENT YEAR : 2017-18)**

Haft Propbuild Private Limited,
306, 308, 3rd Floor, Square One,
C – 2, District Centre, Saket,
New Delhi – 110 017.

vs. ITO, Ward 11 (1),
New Delhi.

(PAN : AABCH8125M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate
Ms. Ananya Kapoor, Advocate
Shri Amarbir Singh Walia, Advocate
REVENUE BY : Md. Gaysuddin Ansari, Senior DR

Date of Hearing : 21.07.2022
Date of Order : 03.08.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT
(A)-15, New Delhi dated 30.09.2019 pertaining to assessment year 2017-18.

2. The grounds of appeal raised by the assessee read as under :-

“Ground No.1:

The Ld. Commissioner of Income Tax (Appeals) - 15, New Delhi (hereinafter referred to as 'CIT(A)') has erred on facts and in law in passing the order dated 30-09-2019 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') towards the appeal filed against the intimation under section 143(1) of the Act.

Ground No.2:

The Ld. CIT(A) has grossly erred both in law and on fact in holding that the Central Processing Centre, Bengaluru (herein after referred as 'CPC') is correct in disallowing the Tax credit amounting to Rs. 1,85,392/- 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 income does not belong to the appellant, does not disentitle the appellant to claim the TDS credit.

In this regard, the appellant has placed reliance on the judgment of Hon'ble Delhi High Court in the case of Commissioner of Income-tax-15 v. Relcom [2015] 62 taxmann.com 190 (Delhi) wherein it has been affirmed that the credit cannot be disallowed to the person on the mere ground that assessee has not shown the income in its income tax return.

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. Also, there is a practical hinderance in claiming such TDS by other assessee to whom the income pertains as TDS credit is in the name & PAN of the Appellant.”

3. Brief facts in this case are that in the processing under section 143 (1) of the Income-tax Act, 1961 (for short 'the Act'), the CPC did not give credit of TDS amounting to Rs.1,85,392/-, though the same was appearing in Form 26AS. The CPC did not issue any notice to the assessee.

4. Assessee challenged the same before the Id. CIT (A) inter alia taking a ground that AO should have made a proposal u/s 143(1)(a) before making the adjustment. The Id. CIT (A) in his order also referred to following submissions made by the assessee :-

“During the year under consideration, the Appellant has exchanged land with two parties i.e. M3M India Private

Limited and GOMBI Buildtech Pvt. Ltd. and has received the balance consideration amounting to Rs.1,85,39,239/- (Including TDS under section 1941A amounting to Rs. 1,85,392/-). The appellant has further transferred the same to M/s Emaar MGF Land limited which is the ultimate holding company of the appellant. It may be noted that the said money has been transferred in line with the collaboration agreement entered into between the appellant and M/s Emaar MGF Land Private Limited (hereinafter referred as 'Emaar'), vide agreement dated January 20, 2007. At the outset, the appellant ('owner of the land') has entered into said collaboration agreement with Emaar ('developer of the project') to develop an integrated township project on the land owned by the appellant. It has been mutually agreed by the developer to provide interest free refundable advance / deposit to the owner of land. Further, it has also been duly agreed that the appellant will transfer the loss/ gain which may arise on exchange or sale of land to the Emaar. The relevant extract of the terms of agreement is mentioned as below: -

"That in case of any parts of the land purchased by the Owner for and on behalf of its Developer is acquired/exchanged/sold or dealt with any manner to/by the Government or any person for compulsory acquisition, consolidation or any other reason whatsoever as may be mutually agreed, the Developer Company shall bear any loss or shall be entitled to any profit/gain as the case may be, arising by way of such transaction and all the cost and expenses relating to the transaction shall be borne by the developer company. The Owner shall however undertake to do 0/1 such acts, deeds, things and matters as may be required to facilitate such transaction as per the instructions of the Developer. The Developer shall adjust the cost of such transaction including other expenses and cost incurred by the Owner on its behalf against the interest free advances made by it to the Owner and to that extent the Interest free advances outstanding against the Owner shall stand reduced. Any deficiency/surplus arising on settlement of consideration/compensation shall be borne/ received by the Developer Company. The Compensation/ consideration so received or receivable shall be on the

account of the Developer Company and the Owners shall immediately remit/adjust the consideration/compensation received to the Developer Company. Any Deficiency or surplus on such transaction shall be exclusively borne by the Developer"

Now, it is to bring to your honor's notice that the Appellant had duly transferred the receipts on account of exchange of land to M/s Emaar MGF land limited, and M/s Emaar MGF land Limited has shown the gain arising out of the said transaction under the head Gain on Exchange of land as apparent from Schedule 22 of the audited financials of M/s Emaar MGF land limited for FY 2016-17 and accordingly had paid taxes on the same. In this regard, confirmation (in original) from M/s Emaar MGF land Limited along with Income Tax Return for AY 2017-18 is enclosed as Annexure-E.

In view of the aforesaid, the appellant has adequately shown its income as NIL and has claimed the TDS credit amounting to Rs.1,85,392/-. However, the Ld. AO has disallowed the credit in an arbitrary manner and without giving any opportunity to the appellant to represent its contention.”

5. Ld. CIT (A) held as under :-

“4.2 From the detailed submissions made by the appellant, it is clear that the corresponding income has not been shown by the appellant in its Return of Income, for which the TDS credit has been claimed. Therefore, the AO is right in disallowing the credit for TDS, for which no income shown by the appellant company. Therefore, considering the facts and circumstances of the case, I do not find any reason to interfere with the findings of the AO, CPC and therefore, the action of the AO is hereby confirmed.”

6. Against the above order, the assessee is in appeal before us. We have heard both the parties and perused the records.

7. We find that ld. CIT (A) has confirmed the order of CPC by ignoring the mandate of law contained in section 143(1)(a) that before making such adjustment, assessee should be put to notice. Since this has not been done the jurisdiction of CPC in doing such adjustment sans any notice is vitiated. Consequently, the adjustment done by CPC is not sustainable in law.

8. Even on merits, assessee has duly narrated the facts and reasons as to where the said income is reflected but ld. CIT (A) has not applied his mind in this regard and confirmed the AO's order

9. As already noted by us, the above adjustment was not liable to be done by CPC without issuing notice in this regard. On merits, the order of ld. CIT(A) exhibits non-application of mind. Hence we set aside the order of authorities below and decide the issue in favour of the assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 3rd day of August, 2022.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated : 3.8.2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-15, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**