

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.7093/Del/2019
Assessment Year: 2016-17

Jayant Bhushan, 1, Jaipur Estate, Nizamuddin East, New Delhi	Vs.	ACIT, Circle 63(1), New Delhi
PAN :AACPB3900G		
(Appellant)		(Respondent)

Appellant by	Shri B.K. Anand, CA
Assessee by	Ms. Anupama Singla, SR. DR

Date of hearing	31.05.2022
Date of pronouncement	29.08.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against the order dated 20.06.2019 of learned Commissioner of Income-Tax (Appeals)-20, New Delhi for the assessment year 2016-17.

2. The solitary dispute arising in the appeal relates to addition/disallowance of an amount of Rs.4,67,300.

3. Briefly, the facts are that assessee is a resident individual and an advocate by profession. For the assessment year under dispute, the assessee had filed his return of income on 17.10.2016 declaring income of Rs.8,19,54,170. Assessee's case was selected for limited scrutiny and in course of assessment proceedings, the assessing officer while verifying the return of income filed by the assessee noticed that assessee has claimed credit of Rs.75,02,413 towards tax deducted at source (TDS). Whereas, the assessing officer noticed that as per Form 26-AS available in the system of the department, the actual TDS amount is not as claimed by assessee but less by Rs.4,63,300. Therefore, he called upon assessee to reconcile the difference. In response, assessee explained that the difference in TDS figure is due to the fact that some of the clients have made less payment than what was billed. Therefore, assessee was under an impression that the said clients have deducted tax at source aggregating to Rs.4,67,300. Under such impression, assessee claimed TDS of the said amount.

4. Without prejudice to the aforesaid submission, assessee submitted that he has offered the gross professional income to tax,

which also included the amount of Rs.4,67,300 less paid by the clients. Thus, it was submitted, in case TDS claimed to the extent of Rs.4,67,300 is not allowed, the said amount should be reduced from the income offered by assessee. However, none of the aforesaid contentions of the assessee were accepted by the assessing officer. Accordingly, he disallowed assessee's claim of TDS for an amount of Rs.4,67,300.

5. Being aggrieved, assessee has filed an appeal before learned Commissioner (Appeals). However, learned Commissioner (Appeals) upheld the decision of the assessing officer.

6. We have considered rival submissions and perused the material available on record.

7. For deciding the controversy, the following observations of learned Commissioner (Appeals) would be relevant:

“Para 6.1 Ground Nos. 1 & 2

6.1.1 The case of the appellant was selected under CASS and the Assessing Officer during scrutiny found that the assessee had claimed TDS amounting to Rs.4,67,300/- which was not reflected in 26AS. The Assessing Officer asked the assessee to provide reconciliation regarding the difference in the above TDS figures. The assessee explained that the difference is because some of the clients have made less payment and the difference was treated by

him as TDS deducted. Since the assessee has offered the gross income along with Rs.4,67,300/- to tax and since the gross income was short of Rs.4,67,300/-, he treated the same as TDS and claimed the amount. The Assessing Officer found that though the assessee has claimed the amount of TDS the same was not substantiated with any TDS certificate. In the absence of the any TDS being deposited to the Government's account the Assessing Officer could not give credit to the assessee of the same amount."

8. As could be seen from the observations of learned Commissioner (Appeals), she has given a clear cut finding that assessee, indeed, had received short payment of Rs.4,67,300, which the assessee assumed to be TDS and claimed credit for the same. She has further held that the short payment made by the client cannot be assumed as TDS, unless, the clients have actually deducted the amount and remitted to the government's account. The aforesaid observation of learned Commissioner (Appeals) assume importance in the context of the alternative claim made by assessee before the departmental authorities to the effect that, in case, the claim of TDS is not allowed, the amount included in the income should be reduced. In our view, the aforesaid alternative claim of the assessee, though, merits consideration, however, have not been properly addressed by the departmental authorities. Though, assessee's excess claim of TDS

assuming that the less payment made by the clients are towards TDS may not be acceptable, however, if the amounts in dispute were not actually paid by the clients but were offered to tax by including it in the income, the same has to be reduced, as, assessee never received such income. Thus, we direct the assessing officer to reduce the amount of Rs.4,67,300 from the income of the assessee and compute the tax liability accordingly.

9. In the result, the appeal is partly allowed, as indicated above.

Order pronounced in the open court on 29th August, 2022.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 29th August, 2022.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	18.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	22.08.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	24.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	25.08.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	29.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	30.08.2022
8.	Date on which the file goes to the Bench Clerk	30.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	