आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "एकल सदस्यीय', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ ITA No. 301/CHD/2022
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Gurpreet Mohan Singh Bindra, # 268, Sector 33A, Chandigarh.	बनाम VS	The JCIT, OSD, Circle 4(1), Chandigarh.
स्थायी लेखा सं./PAN No: ACMPB9080B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri T.N.Singla, CA
राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06.06.2022
उदघोषणा की तारीख/Date of Pronouncement : 02.09.2022

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 18.11.2021 of NFAC, Delhi sitting as First Appellate Authority pertaining to 2013–14 assessment is assailed on the following grounds :

1. *That the order of Learned C.I.T. (Appeals) is bad and against the facts and Law.*
2. *That the Learned C.I.T (Appeals) has wrongly upheld the disallowance of TDS credit of Rs. 9,37,296/- deducted by ex-employer of the appellant.*
3. *That the Learned C.I.T (Appeals) has wrongly ignored the fact that the appellant had paid tax amounting to Rs. 9,97,190/-which includes the claim of TDS of Rs. 9,37,296/- deducted by the employer.*
4. *That the learned Commissioner of Income Tax (Appeals) has* wrongly ignored judgments of the Hon'ble High Courts on the identical issue.*
5. *That the Learned C.I.T. (Appeals) has erred in upholding the decision of the Assessing Officer regarding the not allowing credit of TDS paid on behalf of the appellant during the year under consideration.*

6. That the appellant craves leave to add, alter, amend or withdraw any grounds of appeal before the final hearing.

2. The ld. AR inviting attention to the impugned order submitted that the assessee after retiring from the Armed Forces thereafter had been re-employed. It was submitted that he had been drawing a hefty salary on which the employer had deducted TDS of Rs.9,37,296/-. Credit of the said TDS was denied to the assessee on the ground that the employer had not deposited the same to the credit of the Government of India. The unfairness of the said action was challenged in the proceedings u/s 154 before the AO. It was submitted that it had been argued that the salary received by the assessee was minus the TDS. Form No.16 issued to the assessee in support thereof was relied upon. It was submitted that the assessee has no control over the employer. The Rectification application filed by the assessee before the AO was dismissed requiring the assessee to ask his employer to update TDS data online vide order dated 18.06.2020 passed u/s 154 of the Act. The fact that as far as the assessee is concerned, the amount stood deducted is not disputed by the Revenue also.

3. The assessee carried this issue in appeal before the First Appellate Authority who though held that recovery of this demand may not be affected from the assessee, however, in para 8, AO was directed to charge interest u/s 234A, 234B and 234C.

4. Aggrieved by this, the assessee is in appeal.

5. Reliance was placed on the case of **Devarsh Pravinbhai Patel Vs ACIT** dated 24.09.2018; Hon'ble Karnataka High Court in the case of **Smt. Anusuya Alva [TS-5579-HC-2005(Karnataka)-0]** and Hon'ble Bombay High Court in the case of **Yashpal Sahni [TS-5624-HC -2007(Bombay)-0]**. Reliance was also placed in the case of Sumit Devendra Rajani [TS-627-HC-2014(GUJ)j. and in the case of Executors of the Estate of S.Shanmuga Mudaliar [TS-571-HC-2014(MAD)-O] and also Ashok Kumar B Chowatia [TS-6171-HC-2021(MADRAS)-O], on the basis of these decisions, it was submitted that recovery could be made only from the deductor and the Courts are clear that deductee i.e. the assessee-employee cannot be asked to pay the amount of tax again as he has already suffered a deduction. Accordingly, it was his prayer that the order passed denying full relief to the assessee may be set aside granting full relief to the assessee.

6. The ld. Sr.DR relied upon the impugned order. It was his submission that the decision relied upon by the assessee have been considered. It was submitted that appropriate directions have been given by the CIT(A) in appeal, as a result thereof qua the TDS deducted by the employer, it has been directed that for affecting recovery of this amount, the deducter i.e. the employer of the assessee appellant has to be treated as assessee in default. It was submitted that since

the employer has not deposited it in the Government account, the interest u/s 234A, 234B and 234C being consequential in nature are attracted for which the assessee is liable.

7. I have heard the submissions and perused the material on record. In the facts of the present case, the factum of lapses on the part of the deductor have been addressed by the First Appellate Authority. The position of law thereon is well settled. However, the direction given therein to the AO in para 8 is the cause of the present appeal before us. For ready reference, the relevant finding granting relief addressed in para 6.1 and the directions in para 8 which are a subject matter for consideration in the present proceedings are extracted hereunder :

> *"6.1 These grounds of appeal are effectively against the denial of the TDS credit of Rs. 9,37,296/- to the appellant. The appellant has contended that during the year under consideration, TDS of Rs. 9,37,296/-was deducted by his employer, however, either the same was not deposited or wrongly deposited by his employer. As a result of which the same is not reflecting In his Form 26AS. The appellant has furnished a copy of Form 16 issued to him and has also relied on a catena of judgments of various High Courts in his submission. On perusal of the Form 16 furnished by the appellant, it is observed that it only mentions the amount of tax deducted but does not mention the amount of tax deposited in the Central Government account. Further, no challan or reference number is mentioned on the Form 16 which could indicate deposition of the TDS deducted by the employer. Therefore, it is quite evident that the TDS deducted has not been deposited by the employer. In this regard it is pertinent to note the provisions of sub section 1 and 2 of section 199, which are reproduced as under:*
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> ***"[Credit for tax deducted.***
> *199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of*

the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.
(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made."

Further, the Hon'ble Bombay High Court in the case of Yashpal Sahni [TS-5624-HC-2007 (BOM)] has held that when a TDS certificate has not been issued by the deductor, the deductee assessee is also not entitled to the credit of the same since the conditions of section 199 remain unsatisfied. The TDS certificate issued to the appellant is defective as it, does not demonstrate deposit of this TDS into Central Govt account, which is necessary as per provisions of section 199 for the appellant to be given credit of the same. In these-circumstances, it is not possible to give credit to the appellant for something which has not been deposited in the Government account at the first place. On the other hand it is also to be considered, that as per section 205, once TDS has been deducted by the employer, the deductee assessee should not be called upon to pay the tax himself to the extent to which tax has been deducted from his income. Therefore, this is a bar on recovery from the assessee in such circumstances. The various case laws and the Board's Circulars/OMs relied upon by the appellant also emphasise that the recovery of the demand should not be enforced from the deductee assessee in case of non-deposit of TDS by the deductor.

6.2 In light of the above, as the TDS of Rs. 9,37,296/- claimed by the appellant is not reflecting in the Form 26AS and there is no evidence of the same having been deposited, the credit of the same cannot be allowed to him in view of the provisions of section 199. Hence, the action of the AO is confirmed and the Ground nos. 2 and 3 are 'Dismissed'. However, in light of the provisions of section 205 and the Board's OM dated 11.03.2016, the ***recovery of this demand may not be effected from the appellant, but rather the deductor has to be treated as assessee in default as per the provisions of section 201.***

7. The Ground no. 1 is general in nature and hence not adjudicated upon.

8. The Ground no. 4 is against the levy of interest u/s. 234A, 234B and 234C. As the charge of these interest is consequential in nature, the AO is permitted to charge these interests as per the provisions of the Act. However, as already mentioned in para 6.2, it is the deductor who has to be treated as assessee in default for the purposes of recovery."

(emphasis supplied)

7.1 At the outset, it may be appropriate to address the relevant provisions which came to be considered by the Courts on the issue. Section 203 of the Income Tax Act, 1961 casts a duty on the person deducting tax to furnish certificate for tax deducted at source to the person to whose account credit has

been given. Section 203 casts the duty on the person deducting tax to prepare statement for such period giving the details of the tax deducted at source and remit it to the credit of the Central Government in the prescribed form and if such a person fails to remit the same, then the provision provides that he would be treated as assessee in default u/s 201(1) of the Income Tax Act. It may also be relevant to refer to Section 205 of the Act which restricts the tax authorities from enforcement of any demand on the assessee payee in so far as the amount of tax which had been deducted by the payer and not deposited with the Government. Reference may be made to the decision of the Hon'ble Karnataka High Court in the case of **Smt. Anusuya Alva 278 ITR 206 (Kar)** wherein the Court in very categoric terms observed that under the provisions of the TDS, the deductor of tax acts as an agent of the Revenue as he acts on behalf of the tax authorities. Thus, where there is a violation on the part of such a person acting as a Representative or agent of the Revenue for deduction of tax, the consequence should fall only on the Revenue and the consequences cannot be foisted on the deductee. The only recourse available to the tax authorities in such cases is to recover the amount from the deductor who had deducted the tax and not from the deductee. It is seen that this issue has come up for examination before various Courts and possibly at

the first point of time before Hon'ble Gauhati High Court in the case of **ACIT Vs Om Parkash Gattani (2000) 242 ITR 638**. A perusal of the said decision shows that the Court therein in very categoric terms held that as far as the role of the deductee is concerned, he only gets a certificate to that effect. It has been observed that the deductee has no control over the matter and in case of any violation, it is the deductor who is deemed to be an assessee in default in respect of the tax. This responsibility has been fastened upon the deductor u/s 203 of the Income Tax Act.

7.2. Reference may also be made to the decision of the Bombay High Court in the case of **Yashpal Sahni Vs ACIT (2007) 293 ITR 539 (Bom)** wherein considering the provisions of Section 205 of the Act, the Court in para 15 of the said judgement observed that *Chapter XVII of the Income Tax Act, 1961 provides for collection and recovery of tax by two modes. They are; (one) directly from the assessee and (two) indirectly by deduction of tax at source.* In the facts of the said case, as in the present case, their Lordships observed that "*we are concerned with the second mode of recovery, namely recovery of tax by deduction at source".* Reference may also be made to another decision of the Hon'ble Bombay High Court in the case of **DIT Vs N.A.C. Network Asia, LIC (2009) 313 ITR 187 (Bom)** and decision of the Hon'ble Gujrat High Court in the case of CIT Vs Ranoli Pvt.

Ltd. **(1999) 235 ITR 433 (Guj)** which again lay down similar position of law.

7.3 Accordingly, on a consideration of the aforesaid decisions in the light of the provisions of the Act, I find that the directions given in para 8 which have caused the assessee to come in appeal before the ITAT, at best can be considered to be ambiguous and at worst the directions were not called forth and infact can be said to be contrary to law. The reason for holding directions to be ambiguous is on account of the fact that levy of interest u/s 234A, 234B and 234C is consequential to the additions made/sustained in the assessment order. Thus, where the addition stood deleted holding that in the facts of the present case, the assessee cannot be said to be an assessee in default. The occasion to attract charging of interest u/s 234A, 234B and 234C did not arise and hence, the alarm of the assessee can be said to be misplaced. However, in case the directions given are being so interpreted by the AO and the assessee that notwithstanding the fact that the assessee is not in default on account of the lapses committed by the assessee's employer who acting as an Agent of the Revenue was tasked to deduct tax at source from the salary of the assessee and deposit it in the credit of the Government of India. In these circumstances also, the assessee cannot be said to be an assessee in default. The position of law as

elaborated hereinabove specifically to highlight this fact makes it clear. It is seen that interest u/s 234A is to be charged from the assessee for defaults in furnishing return of income. On a reading of the said provision, it is seen that sub-clause (ii) of clause (b) of Section 234A(1) specifically and clearly states that any tax deducted or collected at source is required to be reduced therefrom. Similarly, when provisions of 234B is considered. It is seen that for charging interest for defaults in payment of advance tax is considered, in terms of Explanation-1 to Section 234B(1)(i) again specifically makes a reference to the fact that "assessed tax" is to be reduced by the amount of any tax deducted or collected at source. Similarly, for attracting the charge of levy of interest for deferment of advance tax as addressed by Section 234C it is seen that Explanation-1 to the 3rd Proviso to Section 234C(1)(b) specifically in sub-clause (1) again makes a clear mention that tax due on the returned income is to be reduced by the amount of any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income. Accordingly, it is seen that for attracting the levy of interest, the calculations necessarily require to be made are to be considered after reducing the TDS deducted in a case like this. Hence, in case the Assessing Officer and the assessee are interpreting the observations/directions in para 8 as a

direction to charge interest holding assessee in default, then such an interpretation is contrary to law. The legislature in very clear terms has already factored the factum of TDS deducted by the deductor. Credit of the said deduction is clearly embedded in the calculation of amount of tax on the total income as considered in Section 234A; and assessed tax as applicable in Section 234B and tax due on the returned income to be considered for Section 234C. Thus, I find that the tax authorities are necessarily bound to factor in the deduction made on behalf of the assessee to the tune of Rs.9,37,296/-. Any other shortfall in the assessed tax and tax on total income or tax due on the returned income would be the only limited areas open to the AO. As far as the present issue of non deposit of the tax deducted from the salary of the assessee in the present case is concerned, the provisions of Section 234A, 234B and 234C would have no role to play.

8. In result appeal of the assessee is allowed.

Order pronounced in the Open Court on 2nd September,2022.

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

"पूनम"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant –
2. .प्रत्यर्थी/ The Respondent
3. .आयकर आयुक्त/ CIT
4. .आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar