

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: 669 & 670/Chny/2022

निर्धारण वर्ष / Assessment Years: 2018-19 & 2019-2020

M/s. PKF Sridhar & Santhanam LLP,
7th Floor, KRD Gee Gee Crystal Towers,
91-92, Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

v. Deputy Commissioner of
Income Tax,
Non- Corporate Circle 7(1),
Chennai.

[PAN: AAOFS-2783-G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Palanevel, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.10.2022

घोषणा की तारीख/Date of Pronouncement

: 19.10.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 14.03.2022 and pertains to assessment years 2018-19 & 2019-20. Since, the facts are identical and issues are

common, for the sake of convenience both the appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity grounds of appeal filed for assessment year 2018-19 are reproduced as under:

"1.The impugned order of the Commissioner of Income Tax (Appeals) is opposed to law and contrary to the facts and circumstances of the case.

2. Short Credit of TDS - Rs.78,31,008/-:

2.1 *The Commissioner of Income Tax (Appeals), NFAC grossly erred in upholding the action of the Assessing Officer in not giving credit for TDS to the tune of Rs.78,31,008/-.*

2.2. *The Commissioner of Income Tax (Appeals), NFAC ought to have allowed TDS as claimed in the return of income since the income was offered for tax in the relevant year.*

2.3. *The Commissioner of Income Tax (Appeals), NFAC grossly erred in not considering the fact that this arises out of multiple factors like different TAN numbers for same customer based on locations, deductions in bills and consequent reduction in TDS, other clerical issues, customers paying in subsequent year and customers doing TDS after our filing IT returns.*

2.4. *The Commissioner of Income Tax (Appeals), NFAC ought to have called for reconciliation between TDS as per 26AS and TDS as per Return of Income.*

2.5. *The Commissioner of Income Tax (Appeals), NFAC ought to have provided sufficient and adequate opportunity to the Appellant to explain the case in detail.*

2.6. *The action of the Commissioner of Income Tax (Appeals), NFAC in not providing sufficient and adequate opportunity to the Appellant is against the principles of natural justice."*

3. At the time of hearing, Ld. Counsel for the assessee submitted that there is a delay of 89 days in filing both the appeals for which a petition for condonation along with affidavit explaining the reason for delay in filing appeal has been filed. The Ld. AR for the assessee referring to petition for condonation of delay submitted that the order of the Commissioner of Income Tax (NFAC) dated 14.03.2022 was served to the assessee on 14.03.2022 and the last date for filing the appeal before the Income Tax Appellate Tribunal was 13.05.2022, but the appeals was filed on 10.03.2022 with a delay of 89 days. The delay in filing appeals is neither intentional nor to derive any undue benefit. But, for the reasons beyond control of the assessee because Mrs. S. Rajeshwari, partner of the firm who was handling income tax matters was infected with Covid during the month of January, 2021 and due to post-Covid complications, she developed a severe eye infection. She was intensely treated by Sankara Nethralaya and after she went to USA for further treatment. Due to this, the firm could not file appeals in time. Therefore, the delay may be condoned.

4. The Ld. DR on the other hand opposing the condonation petition filed by the assessee submitted that reasons given by the assessee does not come under reasonable cause and thus, delay may not be condoned.

5. We have heard both the parties and considered petition filed by the assessee for condonation of delay of 89 days in filing both the appeals and considering relevant facts, we find that there is sufficient and reasonable cause for not filing appeals in time. Therefore, we condone the delay in filing both appeals and admit appeals filed by the assessee for adjudication.

6. The brief facts of the case are that the assessee is a limited liability partnership firm engaged in the profession of consulting and auditing. The appellant filed its return of income for the assessment year 2018-19 on 29.09.2018 declaring a total income of Rs. 5,45,49,293/-. The assessee had also filed return of income for the assessment year 2019-20 on 29.10.2019 admitting total income of Rs. 5,84,96,540/-. The return of income filed by the assessee for both assessment years have been processed u/s. 143(1)(a) of the

Income-tax Act, 1961 (herein after referred to as "the Act") and subsequently the assessment have been completed u/s. 143(3) of the Act and determined total income of Rs. 6,14,27,080/- for assessment year 2018-19 and Rs. 5,84,96,540/- for assessment year 2019-20. The AO had also given credit for TDS for assessment year 2018-19 at Rs. 2,42,96,750/- as against the claim of the assessee at Rs. 3,21,27,758/-. Similarly, for assessment year 2019-20, credit has been given for Rs. 2,63,71,542/- as against the claim of assessee at Rs. 3,62,37,959/-. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Ld. CIT(A), NFAC, Delhi, for the reasons stated in the appellate order dated 19.02.2021 & 02.07.2020 sustained denial of credit for TDS. Being aggrieved by the CIT(A) orders, the assessee is in appeal before us.

7. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has erred in not allowing credit for TDS as claimed by the assessee, even though the assessee has filed relevant details of unclaimed TDS brought forward from earlier years and claimed in the year on the basis of mercantile system of accounting. He further submitted that the AO has allowed TDS

credit as per Form 26AS without appreciating the fact that as per the provisions of section 199 & 200 of the Act, credit for TDS should be allowed when the income pertains to TDS has been offered to tax. Since, the assessee has offered to tax income relating to TDS credit on the basis of mercantile system of accounting, has rightly claimed credit for TDS and said particulars has been furnished in ITR-5 filed for the relevant AY. The AO without appreciating the fact rejected claim of the assessee.

8. The Ld. DR on the other hand supporting the orders of the Id. CIT(A) submitted that as per the amended Form ITR-5, it is for the assessee to carry forward unclaimed TDS to subsequent financial years and in case the assessee does not carry forward TDS, then the CPC will allow credit for TDS as per Form 26AS. Therefore, there is no error in the order passed by the CPC in denying credit for TDS pertains to earlier years. The Id. DR also submitted that if at all the assessee has furnished relevant details and also offered relevant income to tax for the impugned assessment years, then a direction may be given to the Assessing Officer to verify the claim of the assessee and allow TDS as per law.

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assessee has claimed credit for TDS amounting to Rs. 3,21,27,758/- for assessment year 2018-19 & Rs. 3,62,37,959/- for assessment year 2019-20, whereas ADIT, CPC has allowed TDS credit for Rs. 2,42,96,750/- for assessment year 2018-19 & Rs. 2,63,71,542/- for assessment year 2019-20. We find that the assessee has claimed credit for TDS pertains to earlier financial years, because income relating to said TDS has been offered to tax for the impugned assessment years on the basis of mercantile system of accounting. The assessee had also furnished necessary details of TDS brought forward from earlier financial years in Form ITR-5 filed for impugned assessment years. As per the provisions of section 199 & 200 of the Act, credit for TDS should be allowed when the assessee has offered income relating to said TDS. The assessee claims that income relating to said TDS has been offered to tax for the impugned assessment years. If, the claim of the assessee is correct then the credit for TDS should be allowed on the basis of claim of the assessee including TDS brought forward from earlier

financial years. The fact needs to be verified. Therefore, we set aside the issue to the file of the AO and direct the Assessing Officer to verify the claim of the assessee and in case the AO finds that income relating to said TDS has been offered to tax for the impugned assessment years, then the credit for TDS also needs to be allowed as claimed by the assessee.

10. In the result, the appeals filed by the assessee for assessment years 2018-19 & 2019-20 are allowed for statistical purposes.

Order pronounced in the court on 19th October, 2022 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated: 19th October, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |