IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA Nos. 1292 & 1293/Mum/2022
(A.Ys.2018-19 & 2019-20)

M/s Greatship (India) Ltd. C/o Kalyaniwalla & Mistry LLP, Esplanade House, 29, Hazarimal Somani Marg, Fort, Mumbai – 400001	Vs.	Asst. Director of Income-tax, CPC, Bangalore, Karnataka - 560500
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCG8542K		
Appellant	..	Respondent

Appellant by :	Akram Khan & Siddhant Raichura
Respondent by :	Harmesh Lal

Date of Hearing	06.10.2022
Date of Pronouncement	14.10.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeals filed by the assessee are directed against the order passed by NFAC, Delhi, which in turn arises from the intimation order passed u/s 143(1) of the Act for A.Ys. 2018-19 & 2019-20. Since the appeals are based on similar issue and identical facts, therefore, for the sake of convenience both the appeals are adjudicated together by way of a consolidated order. We shall take ITA No.1292/Mum/2022 as a lead

case and its finding will be applied to ITA No.1293/Mum/2022 as mutatis mutandis. The assessee has raised the following grounds before us:

> *"1. The Commissioner of Income-tax (Appeals) erred in holding that the Appellant was not entitled to TDS credit of Rs.28,33,048/- for AY 2018-19.*
>
> *2. The Commissioner of Income-tax (Appeals) failed to appreciate the provisions of Rule 37BA(3) which provide that credit for TDS should be granted for the assessment year in which the income is assessable.*
>
> *3. The Commissioner of Income-tax (Appeals) erred in refusing to follow the order of the Income-tax Appellate Tribunal in the Appellants' own case for the AY 2015-16 when the facts of the case were identical."*

2. The assessee is a shipping company and provides offshore oilfield services. During the year under consideration the assessee has filed its return of income on 30.11.2018 which was processed u/s143(1) of the Act by the CPC, Bangalore on 19.03.2020. The issue contested in the appeal is that while processing return of income, CPC has granted TDS credit to the amount of Rs.17,51,85,759/- against the claim of TDS amount of Rs. 17,80,18,807/-. Therefore, TDS credit was granted short by the amount of Rs.28,33,048/-.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) had dismissed the appeal of the asssesse stating that differential tax credit of Rs.28,33,048/- which was not granted in the intimation issued was due to the fact that the said amount was not reflected in Form 26AS. The ld. CIT(A) noticed that the difference in the amount of TDS credit as per Form 26AS and amount claimed by the assessee in its return of income was due to the fact that the assessee's client had booked the expenses in the same financial year in which the assessee had recognized the income, however assessee's client had deducted tax while making payment in the subsequent financial year as

a result of which the said tax was included in the TDS return of the subsequent financial year. Therefore, the ld. CIT(A) held that in assessee's case the tax had not been deducted by the deductor in the relevant year, therefore, the claim of the assessee for TDS was not acceptable.

4. During the course of appellate proceedings, the ld. Counsel submitted that in the case by the assessee itself for A.Y. 2015-16 the ITAT, Mumbai had adjudicated the similar issue on identical facts in favour of the assessee vide ITA No. 5562/Mum/2018 for A.Y. 2015-16, dated 8.01.2020. The ld. Counsel has also referred provision of Sec.199 r.w.rule 37BA of the I.T. Rule 1962 in support of its claim.

On the other hand, the ld. D.R. supported the order of the CIT(A).

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the assessee claimed that the corresponding amount has been fully offered to tax, therefore, it was entitled to entire TDS credit of Rs.17,80,18,807/- as claimed in the return of income as per the provisions of Sec. 199 r.w.rule 37BA(3) of the I.T. Rule 1962. The assessee has also submitted that it has not claimed such TDS credit while filing return of income for the assessment year 2019-20 and placed reliance upon provision of Sec. 199 r.w.rule 37BA(3) and also judicial decision in its own case as referred supra in this order. In the light of the above facts, findings and circumstances, it is observed that ld. CIT(A) has not adjudicated the claim of the assessee in accordance with the provisions of Sec. 199 r.w.rule 37BA(3) of the I.T. Rules, 1962 and also not taken into consideration the decision of ITAT as referred supra in the case of the asessee itself. With the assistance of the ld. representative we have gone through the decision of the ITAT, in the

case of the assessee itself vide ITA No. 5562/Mum/2018 for A.Y. 2015-16, dated 8.01.2020, it is observed that the ITAT has decided the issue in fovour of the assessee in accordance with the provisions of Sec. 199 r.w.rule 37BA(3) of the Act. The relevant operating para of the decision of ITAT is reproduced as under: (A) page 6-13 ITAT order

> *"6. We have given a thoughtful consideration to the issue before us and are unable to persuade ourselves to subscribe to the view taken by the lower authorities. On a perusal of section 199(3) of the Act, we find, that the same reads as under:-*
>
> > *"(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which credit may be given. (Emphasis supplied by us)."*
>
> *In our considered view, the aforesaid statutory provision contemplates that the Board may, for the purpose of giving credit in respect of tax deducted or tax paid in terms of the provisions of Chapter VII of the Act, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and subsection (2) and also the assessment year for which such credit may be given. On a perusal of the relevant Rule 37BA, we find, that the same reads as under :*
>
> > *"Credit for tax deducted at source for the purposes of section 199.*
> >
> > *(1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.*
> >
> > *(2) (i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*
> >
> > *Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).*
> >
> > *(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such, 'person.*
> >
> > *(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule*

(1) and shall keep the declaration in his safe custody.

(3) (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of –

(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority: and

(ii) the information in the return of income in respect of the claim for the credit, subject to verification in accordance with the risk management strategy formulated by the Board from time to time."

Rule 37BA(3)(i) clearly provides that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. In other words, it is specifically provided that the credit for the tax deducted at source cannot be divorced and/or separated from the year in which the corresponding income is assessable. In fact, we find that Rule 37BA(3)(ii) goes to the extent of providing that where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax. Accordingly, the legislative intent of emphasizing an inextricable nexus between the credit for tax deducted at source (TDS) and the correlating assessable income, can safely be gathered beyond any doubt. In fact, we hold a strong conviction, that the credit for tax deducted at source (TDS) and the corresponding assessable income is so much inextricably interlinked or rather interwoven, that in case they are divorced and considered on a standalone basis in separate years, then the same would result to a distorted tax/interest liability of the assessee under the Act. As such, we are unable to comprehend as to on what basis the aforesaid claim of the assessee for credit of TDS of Rs.45,41,995/-, which as claimed by the assessee pertains to its duly accounted for sales/receipts for the year under consideration i.e. A.Y 2015-16, had been declined by the lower authorities. Our aforesaid view that as per section 199(1) r.w.r 37BA, the credit for the tax deducted at source has to be allowed to the assessee in the year in which the correlating income is assessable is fortified by the order of a co-ordinate Bench of the Tribunal viz. ITAT, Pune, „B" Bench in the case of Mahesh Software Systems P.Ltd Vs. ACIT, Cir-11(2), ITA No. 1288/Pun/2017, dt. 20-09-2019 for A.Y 2011-12. In the said case, it was observed by the Tribunal, as under:

"4. We have heard both the sides and gone through the relevant material on record. A copy of the Sale register of the assessee has been placed at pages 46 and 47 of the paper book depicting total sales for the year under consideration at Rs.3,69,53,687.33. This amount of turnover of Rs.3.69 crore includes the invoice dated 28-03-2011 amounting to Rs.80,10,000/- raised on Ashoka Leyland. It is in respect of this amount of invoice Rs.80,10,000 plus other taxes etc. totalling to Rs.84,10,000/-, that Ashoka Leyland deducted tax at source amounting to Rs.8,41,050/-. Thus, it is established that the assessee recorded invoice of

Rs.84.10 lakh in its accounts for the year under consideration. It is also equally true that Ashoka Leyland deducted tax at source on such amount to the tune of Rs.8,41,050/- but deposited it with the exchequer in the month of April, 2011. The dispute has arisen because of this only. Whereas the claim of the assessee is that the benefit of TDS should be allowed in the year in which the assessee has recorded the corresponding income and the Revenue is contending that such benefit can be given only in the year of deposit of TDS.

5. Section 199(3) of the Act, which is relevant for our purpose, reads as under:

> *"The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given".*

6. The relevant rule is 37BA which is reproduced as under:

> *"Credit for tax deducted at source for the purposes of section 199.*
> *(1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by deductor to the income-tax authority or the person authorised by such authority.*
> *(2) (i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*
> *Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).*
>
> *(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*
>
> *(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.*
>
> *(3) (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.*
>
> *(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.*
> *(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of –*
>
> *(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority: and*

(ii) the information in the return of income in respect of the claim for the credit, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

7. The AO has relied on sub-rule (1) of section 37BA for denying the benefit of TDS during the year under consideration. This part of the Rule provides that the credit for TDS shall be given to the person to whom payment has been made or credit has been given on the basis of information relating to TDS furnished by the deductor. What is material for sub-rule (1) is the beneficiary of credit for the TDS, being the person to whom payment has been made, which in the instant case is the assessee. The ld. CIT(A) has, in addition, relied on sub-rule (4) of Rule 37BA, which again provides that the credit for TDS shall be granted on the basis of information relating to deduction of tax at source furnished by the deductor. How, this rule prejudices the claim of the assessee is anybody"s guess. Obviously, the information about the TDS by Ashok Leyland is not denied. Both the sub-rules simply provide for granting of the benefit of TDS. The point of time at which the benefit of TDS is to be given, is governed by sub-rule (3) of Rule 37BA, which unequivocally provides through clause (i) that the „credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable". It is, ergo, abundantly clear from the mandate of Rule 37BA(3)(i) that the benefit of TDS is to be given for the assessment year for which the corresponding income is assessable. Since the income of Rs.84.10 lakh, on which tax of Rs.8,41,050/- was deducted at source, is patently assessable in the year under consideration, we hold that the benefit of the TDS should also be allowed in the same year, namely, the year under consideration. We, therefore, overturn the impugned order and direct accordingly."

7. On the basis of our aforesaid deliberations, we are unable to subscribe to the view taken by the lower authorities that despite the fact that the sales/receipts were accounted for by the assessee during the year under consideration viz. A.Y 2015-16, the corresponding credit of TDS of Rs.45,41,995/- was not be allowed to it in the said year. In fact, we are unable to persuade ourselves to subscribe to the view taken by the lower authorities, that the credit for the tax deducted at source (TDS) was to be allowed to the assessee in the immediately succeeding year i.e A.Y 2016-17, despite the absence of the assessable income in the said year. Accordingly, we restore the matter to the file of the A.O, with a direction to allow the short/deficit credit of TDS of Rs.45,41,995/- to the assessee in the year under consideration i.e A.Y 2015-16. Before parting, we may herein observe, that the A.O before allowing the credit of the TDS of Rs. 45,41,995/- shall verify the veracity of the claim of the assessee that the sales/receipts corresponding to the TDS credit of Rs.45,41,995/- were accounted for by it during the year under consideration viz. A.Y. 2015-16. Also, as a word of caution, the A.O shall take necessary steps in order to ensure that no TDS credit of the aforesaid amount of Rs. 45,41,995/- is/was availed by the assessee in the immediately succeeding year i.e A.Y 2016-17 in which the same is reflected in its "Form 26AS"."

Following the decision of ITAT in the case of the assessee itself as elaborated above we direct the A.O to allow the claim of the assessee. Accordingly all the grounds of appeal of the assessee are allowed.

ITA No.1293/Mum/2022

6. As the facts and the issue involved in this appeal are the same as supra in ITA No. 1292/Mum/2022, therefore, applying the same findings mutatis mutandis, this appeal of the assessee is also allowed.

7. In the result, the appeals of the asssessee are allowed.

Order pronounced in the open court on 14.10.2022

Sd/-	Sd/-
(Kuldip Singh)	(Amarjit Singh)
Judicial Member	Accountant Member

Place: Mumbai
Date 14.10.2022
Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.