

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

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

ITA No. 351/Del/2020
Assessment Years: 2016-17

Exxonmobil Catalysis and Licensing LLC, Deloitte Touche Tohmatsu India LLP, Building No.10, TowerB, 7 th Floor, DLF Cyber City Complex, DLF City, Phase II, Gurgaon-122002, Hr.	Vs.	DCIT, Centralized Processing Centre, Bangaluru (Karnataka)
PAN :AACCE6811E		
(Appellant)		(Respondent)

Assessee by	Shri Vishal Kalra, Adv. And Mr. Reema Grewal, CA
Department by	Shri Sanjay Kumar, Sr. DR

Date of hearing	03.11.2022
Date of pronouncement	10.11.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned appeal by the assessee arises, out of order dated 20.11.2019 of Learned Commissioner of Income-Tax (Appeals)-42, Delhi pertaining the assessment year 2016-17.

2. Short issue arising for consideration relates to non-grant of credit of tax deducted at source amounting to Rs.26,61,695.

3. Briefly, the facts are, for the assessment year under dispute, assessee filed its return of income on 14.02.2018 declaring income of Rs.7,12,37,430. In the return of income so filed, the assessee claimed credit for TDS of Rs.26,21,695. While processing the return the Centralized Processing Centre (CPC), Bangaluru rejected the claim of TDS as it was not reflected in Form 26AS. Against the intimation issued under Section 143(1) of the Act, the assessee moved rectification application, which was rejected. Against the said rejection order, assessee filed an appeal before Learned Commissioner (Appeals). However, the appeal filed by the assessee was dismissed.

4. Before us, learned counsel appearing for the assessee submitted, the assessee follows accounting system of recognizing revenue on accrual basis. He submitted, on 31.03.2016 the assessee raised an invoice on Reliance Industries for an amount of US dollar 309870. However, though, the amount was accounted for in the books of account of the assessee as income in financial year 2015-16 corresponding to assessment year 2016-17, however, payment was

actually released by Reliance Industries in the subsequent assessment year after deduction of tax at source. He submitted, since, the assessee recognizes revenue on accrual basis, it accounted for the income in assessment year 2016-17 and also claimed credit for the TDS. Drawing our attention to Rule 37BA, learned counsel submitted, credit for TDS has to be allowed in the year in which the corresponding income is taxable. Thus, he submitted, assessee's claim of refund should have been accepted in the impugned assessment year. In support, learned counsel relied upon the following decisions:

1. Mahesh Software Systems (P) Ltd. Vs. ACIT, Circle-11(2), Pune – [2019] 112 taxmann.com 354 (Pune – Trib.); &
 2. Shivganga Drillers (P) Ltd. Vs. CPC, Income-tax, Bangalore – [2022] 139 taxmann.com 538 (Indore – Trib.).
5. Learned Departmental Representative submitted, since, the deductor has deducted tax in assessment year 2017-18 and TDS certificate was issued for assessment year 2017-18 as well as the TDS amount was reflected in Form 26AS for assessment year 2017-18, the TDS credit could not have been given in assessment year 2016-17.

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

7. Facts on record reveal that the assessee raised an invoice on Reliance Industries Ltd. on 31.03.2016 for an amount of 309,870 US dollar. It is not disputed that the assessee recognizes income on accrual basis and in the return of income filed for the impugned assessment year, the assessee has offered to tax the invoice amount raised on Reliance Industries Ltd. The assessee also claimed the corresponding TDS credit in the impugned assessment year. However, since the payment was released by Reliance Industries Ltd. in the subsequent assessment year after deduction of tax at source, the TDS amount was reflected in Form 26AS for assessment year 2017-18. In fact, the TDS certificate issued by Reliance Industries Ltd., the TDS amount was shown for assessment year 2017-18. To a specific query raised by us, learned counsel appearing for the assessee made a statement at the Bar that neither the assessee has claimed TDS credit for the amount in dispute in assessment year 2017-18 nor Assessing Officer has granted any such credit. On a perusal of Rule 37BA, it is observed that TDS credit has to be granted in the year in which the

corresponding income is taxable. As per the accounting principle followed by the assessee, the income relating to the TDS is taxable in assessment year 2016-17. In fact, the assessee has offered the amount to tax in assessment year 2016-17. That being the factual position emerging on record, the assessee must get credit for the TDS amount of Rs.26,61,695 in the impugned assessment year. More so, when the assessee has claimed that the TDS credit for the amount in dispute has not been granted in assessment year 2017-18.

7. In view of the aforesaid, we direct the Assessing Officer to grant credit for TDS of Rs.26,61,695 to the assessee after factually verifying that credit for such TDS has not been granted to the assessee in assessment year 2017-18.

8. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 10th November, 2022.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 10th November, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi