

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “F” DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.778/DEL/2022
Assessment Year 2018-19

Prakash Sunrise Healthcare Limited, Mission Compound, Begum Bridge Road Meerut, Meerut.	Vs.	Income Tax Officer, CPC, Bangalore.
TAN/PAN: AACCP1267D		
(Appellant)		(Respondent)

Appellant by:	Shri Rohit Agarwal, CA		
Respondent by:	Shri S.M. Singh, Sr.DR		
Date of hearing:	15	11	2022
Date of pronouncement:	25	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [‘CIT(A)’ in short] dated 22.03.2022 arising from the assessment order dated 26.08.2020 passed by the Assessing Officer (AO) under Section 154 of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

2. The grounds of appeal raised by the assessee read as under:

“1. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the action of the Id. A.O. (CPC) to disallow the credit of TDS of Rs.5,60,390/- on the basis of mismatch of income being offered in earlier years as against the TDS appearing in Form 26AS of the appellant during the year under appeal, referring to the provisions of section 199 of the Income Tax Act, 1961 read with rule 37BA of the Income Tax Rule, 1962.

2. *That without prejudice to above, the Id. CIT(A) ought to have directed the Id. A.O. (CPC) to allow credit of TDS under reference of Rs.5,60,390/- following the judgment of Hon'ble Delhi High Court in the case of Court on its own motion vs. Commissioner of Income Tax (2013) 352 ITR 273 (Del) and other judicial pronouncements on the issue.*

3. *That the observation of the Id. CIT(A) that "in such case as per rule 37BA(3)(ii), the appellant can claim TDS credits in respective years, in which the income has been offered to tax" is unjust & impractical, as the appellant is unable to claim tax credit of such TDS in the year, in which income has been offered for want of TDS credit in Form 26AS of the respective year."*

3. Briefly stated, the assessee is carrying on business of running and maintenance of Nursing Home and has been imparting medical services to various government employees including military personnel for and on behalf of the CGHS and ECHS. The Assessee filed its return of income declaring total income of Rs.1,92,27,329/- for which the total receipts of business and profession was declared at Rs.7,58,33,708/-. While computing the tax dues, the assessee claimed TDS credit as appearing in Form 26AS for the Assessment Year 2018-19 at Rs.90,63,042/- which was deducted by the payers from total professional receipts of Rs.8,20,76,867/-. The Assessing Officer (CPC) while processing the return of income disallowed credit of TDS at Rs.6,65,610/- holding the same as unmatched TDS, i.e, the TDS for which corresponding income has not been offered. As per the statement of facts, the assessee filed rectification application citing reason for mismatch that assessee has been following accrual system of accounting whereas the Government Department (payers of income to the assessee) have been following cash system of accounting. As stated, the reason for mismatch flows from the fact that the assessee has declared income in the year of accrual of income while the payer Government bodies have, at times, made

payments of bills in later years and TDS were deducted in the year of payments following cash method of accounting. Hence, TDS credit is appearing in form 26AS of the succeeding year(s) in such belated payment cases. The assessee has claimed TDS in the subsequent years in which it has been deducted and paid by the Department on the basis of credit of such TDS reflected in form 26AS of the succeeding giving rise to the mismatch. The corresponding income against claims of belated TDS credits are stated to be already reported in the year of raising invoice by the Assessee following accrual method of accounting. The rectification application filed by the assessee seeking credit of TDS was stated to have however been rejected by the Assessing Officer (CPC) stating that no *prima facie* error is found.

4. Aggrieved by the denial of relief in rectification proceedings under Section 154 of the Act, the assessee preferred appeal before the CIT(A) NFAC. The CIT(A) also however granted partial relief of Rs.1,05,220/- and retained the action of the Assessing Officer in respect of TDS credit of Rs.5,60,390/- comprising of four parties namely, ECHS Bareilly, ECHS Meerut Cell, ECHS Babugarh and Bank of Baroda citing provisions of Section 199 of the Act and Rule 37BA of the IT Rules.

5. Further aggrieved, the assessee preferred appeal before the Tribunal. Before the Tribunal, the assessee reiterated the submissions made before the CIT(A) and submitted that in terms of Section 199 r.w. Rule 37BA of the Act, the assessee is entitled to TDS credit only when the TDS is deducted and paid to the Government Treasury by the deductor. While the assessee has declared the income on accrual basis in the earlier years as tabulated at page no.80 of the paper book, the assessee was not

entitled to claim the deduction unless the payment has been made by the deductor and reflected in form 26AS, i.e., Annual Information Statement (AIS) collated by the Department. The Id. counsel further submitted that the corresponding income has already been declared in the respective assessment years as per accrual method but TDS has been claimed in this year when the credit has been reflected in form 26AS. Summary of receipts and TDS thereon year-wise appears at page no.80 which reproduced herein.

PRAKASH SUNRISE HEALTHCARE LIMITED

Payment recd List as per 26AS and in our Account year wise F.Y. 2017-18

Name of Deductor	Year of account for of the revenue in the books of account of the appellant								Amount as per Form 26AS	
	F.Y.2017-18		F.Y.2016-17		F.Y.2015-16		F.Y.2011-12 TO 2014-15		F.Y.2017-18	
	Amount	TDS	Amount	TDS	Amount	TDS	Amount	TDS	Amount	TDS
BOB Meerut	18,015.00	1,802.00							18,015.00	1,802.00
ECHS Bareilly	79,21,258.84	8,80,369.62	6,47,07,137.29	71,97,417.61	36,32,143.87	4,03,580.77		-	7,62,60,540.00	84,81,368.00
NICL Limited	87,361.00	8,736.00							87,361.00	8,736.00
ECHS Meerut Cell							9,74,368.00	97,437.00	9,74,368.00	97,437.00
United India Insurance	43,103.00	4,311.00							43,103.00	4,311.00
FCI	8,28,331.00	82,870.00							8,28,331.00	82,870.00
ECHS Babugarh							3,65,778.00	36,578.00	3,65,778.00	36,578.00
Raksha TPA	75,003.00	7,501.00							75,003.00	7,501.00
BOB	68,567.00	6,857.00							68,567.00	6,857.00
SBI Gen Ins	28,645.00	2,865.00							28,645.00	2,865.00
CGHS UTI Delhi	3,85,243.00	38,530.00	19,49,577.00	1,94,952.00	3,94,525.00	39,453.00	2,43,607.00	24,361.00	29,72,952.00	2,97,296.00
HDFC ERGO	3,54,204.00	35,421.00							3,54,204.00	35,421.00
	98,09,730.84	10,69,262.62	6,66,56,714.29	73,92,369.61	40,26,668.87	4,43,033.77	15,83,753.00	1,58,376.00	8,20,76,867.00	90,63,042.00

6. The Id. counsel next submitted that the similar issue has come up before the Hon'ble Delhi High Court in the case of *Court On Its Own Motion vs. CIT (2013) 31 taxmann.com 31 (Del)* where the hardship faced by the assessee due to different methods of accounting was judicially recognized by the Hon'ble Delhi High

Court and the Department was directed to take remedial steps and ensure that TDS claimed is not rejected on such grounds.

7. The Id. DR for the Revenue, on the other hand, has relied upon the order of the CIT(A) and submitted that the relief has been granted by the CIT(A) in respect of number of parties where the reasons for mismatch could be ascertained.

8. We have considered the rival submissions. It is the case of the assessee that assessee being a company, follows accrual method of accounting whereas the corresponding deductors follow cash method and deducted TDS in the year in which the invoice of the assessee is acknowledged and accounting entries are made in their books. It is further pointed out that minute details have been given for each and every govt. employee who have availed the services on behalf of the deductor, namely, ECHS Bareilly, ECHS Meerut, ECHS Babugarh and Bank of Baroda. The assessee thus asserts that the mismatch on account of TDS is beyond the control on the part of the assessee and such mismatch resulting from different accounting policies adopted by Assessee and deductors have occurred in the past and will continue to occur in other years also until a device is put in place of making the accounting method uniform for all assessees or making suitable amendment in the law to remedy the situation.

9. We find *prima facie* merit in the plea of the assessee assigning the reason for mismatch. We notice that the assessee has placed threadbare details of various patients availing services of the assessee nursing home through the deductor agencies. Therefore, on first principles, the TDS credit cannot, per se, be denied to the assessee where the TDS has been eventually

deducted and deposited in the Government Treasury. The Revenue is under obligation to give suitable credit for such deduction either in the year in which the corresponding income has been declared or in the year in which TDS credit has been received in the Treasury. Thus, when seen in perspective, the claim of the assessee is in tune with the judgment of the Hon'ble Delhi High Court in *Court On Its Own Motion (supra)*. Having come to this conclusion, however, the underlying factual details to demonstrate the inclusion of corresponding receipts in other years may need some verification by the Assessing Officer. Thus matter is remitted back to the file of Assessing Officer for ascertainment of factual assertions. The Assessing Officer shall grant credit of TDS deducted and claimed by the assessee on being satisfied with the fact that the corresponding income has been duly declared by the assessee in any of the assessment years. The matter is accordingly remitted to the file of the Assessing Officer for verification, if any, and for grant of TDS credit as claimed. Needless to say, reasonable opportunity shall be given to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/11/2022.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /11/2022

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Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**