

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "B" : DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.454/Del./2018  
Assessment Year : 1999-2000

Delhi Transport Corporation  
Employees Superannuation Pension  
Trust,  
New Delhi.

Vs. DCIT (E),  
Circle-1(1),  
New Delhi.

PAN: AAATD0318G

(Appellant)

(Respondent)

Assessee by: Ms Avnish Ahlawat, Advocate  
Revenue by : Shri Gurpreet Shah Singh, Sr. DR

Date of Hearing : 09.01.2023  
Date of Pronouncement : 13.01.2023

**ORDER**

**PER SHAMIM YAHYA, A.M.:**

This appeal filed by the assessee is directed against the Order of the Ld. CIT(A)-40, Delhi, dated 22.09.2017 and pertains to A.Y. 1999-2000.

2. The grounds of appeal read as under:-

"1. *Because on the facts and circumstances of the case the Ld. Assessing officer has erred in law in denying refund of Rs. 4,70,222/- to DTC Employees Superannuation Pension Trust for the Assessment year 1999-2000. The Assessing Officer has totally ignored the facts that the assessee did file their return with original TDS certificate and has been claiming for refund for*

*assessment year 1999-2000, 2000-2001 and 2001-2002 since 2002.*

*2. Because the assessee submitted Indemnity bond for all three years on 05.11.2002 and again on 20.03.2005 separately for all the three years and therefore, was entitled to refund for the year 1999-2000 for which revised return was admittedly filed with the original certificate.*

*3. Because there was no dispute on the issue that revised return was not filed within time nor there was any admission in the writ petition by the counsel for DTC the same was filed beyond time. Copy of the writ petition enclosed herewith and marked as Annexure P-10."*

3. Brief facts of the case are that the return of income for assessment year 1999-2000 was filed on 30/11/1999 in which, by mistake, refund for tax deducted at source of Rs.4,70,222/- from interest income was not claimed. The assessee subsequently filed its return for assessment year 2000-01 on 30/11/2000 where refund of Rs.27,61,048/- was claimed which included the amounts on account of refund of Rs.4,70,222/- for assessment year 1999-2000, Rs.5,49,066/- for assessment year 2000-01 and Rs.17,41,760/- for assessment year 2001-02. An application for refund for assessment year 2000-01 was made to Ward-32(1) besides the refund for assessment year 1999-2000. An indemnity bond for Rs.25,40,689/- which included the amount to be refunded for assessment year 1999-2000 was also made. The assessee again requested for refund of Rs.4,70,222/- for assessment year 1999-2000 together with other refunds for assessment years 2000-2001 and 2001-2002. A Writ Petition was filed with the Hon'ble Delhi High Court for non-receipt of refund subsequent to which related documents were filed again and refunds

for assessment years 2000-2001 and 2001-2002 were released. However, the request of refund for assessment 1999-2000 was rejected stating that it was not claimed by the assessee and no TDS certificate had been filed by the assessee. Before the Hon'ble Delhi High Court, the Counsel of the assessee claimed that a letter with revised return for assessment year 1999-2000 had already been filed by the assessee on the instructions of the Department along with necessary documents. On the directions of the Court, the assessee filed all the necessary papers once again and based on this the Deputy Commissioner of Income tax (Exemption), Circle-1 (1), New Delhi passed an order rejecting the refund stating that the return was time barred. The order rejecting the claim of the assessee was placed before the Court and the Court granted liberty to the assessee to approach the appellate authority.

4. When the matter travelled to the Id.CIT(A), he did not consider the merits of the assessee's plea on the ground that TDS was not claimed in the original return and TDS was claimed in the revised return which was filed beyond the time specified in the Income-tax Act. The entire order of the Id.CIT(A) in this regard can be gainfully referred as under:-

*"5.1 The appellant has raised 4 grounds of appeal in which the main issue is regarding rejection of request of refund of tax deducted at source amounting to Rs.4,70,222/- for assessment year 1999-2000.*

*5.2 It is seen from the order of the Assessing Officer that in this case the Hon'ble Delhi High Court vide order dated 13/07/2016 had directed the Assessing Officer to take details regarding the assessment year 1999-2000 and after, giving a hearing to the petitioner, decide the claim of the petitioner*

*relating to the claim of the refund within the period of 4 weeks. The relevant portion of the directions given by the Hon'ble Court in W.P.(C)2331 /2016 vide order dated 13/07/2016 are reproduced below:*

*"1. It is pointed out by Mrs Ahlawat, learned counsel appearing for the Petitioner, that while the refund has been issued to the petitioner for the Assessment Years ('AYs') 2000-01 and 2001-02, the application for refund for the AY 1999-2000 has been rejected. A copy of the communication dated 10th June, 2016, addressed to the petitioner by the Dy. Commissioner of Income Tax (E) Circle-1 (1), New Delhi ['DCIT(E)'] has been placed on record. The reason given in the said communication is that, in the income tax return filed by the Petitioner for AY 1999-00, it had not claimed any TDS.*

*2. Mrs Ahlawat states that the above reason is factually incorrect since according to her the Petitioner filed a revised return for AY 1999-2000, in which the TDS was claimed, and also furnished an indemnity bond on 20th March 2006, as required by the Department.*

*3. It may be open to the Petitioner to place the above details before the DCIT(E) within one week from today. Thereafter, after giving a hearing to the Petitioner by the DCIT(E), the DCIT(E) will decide the Petitioner's claim for refund of AY 1999-2000 within a period of four weeks. The order passed thereon by the DCIT(E) be placed on record before the next date."*

*5.3 The requisite details were submitted by the appellant to the Assessing Officer on 02/08/2016. The details submitted were examined by the Assessing Officer but the claim of refund was not found to be acceptable because-*

*a. TDS was not claimed in the original return.*

*b. TDS was claimed in the revised return but the revised return was filed beyond the time specified in the Income Tax Act.*

*5.4 It was also noted by the Assessing Officer that Mr. Ahlawat, the Counsel of the assessee, had admitted that the petitioner had filed the return for assessment year 1999-2000 subsequently in which TDS was claimed and also furnished indemnity bond on 20/ 03/ 2006. The application for refund for assessment year 1999-2000 was rejected.*

*5.5 I have considered the impugned order and also the submissions of the appellant Credit for tax deducted at source is given while assessing the income relevant to the assessment year. For the purpose, a claim for the same has to be made while filing the income tax return. Further, as per the rules as they existed for the relevant period TDS certificates, in original, had to be enclosed with the return of income.*

*5.6 In the case of the appellant, it is not disputed that the claim of refund of tax deducted at source for the assessment year 1999-2000 was not made in the original return filed for the said year. It is also not the case of the appellant that the revised return was filed within time since this finding of the Assessing Officer has not been challenged in the appellate proceedings.*

*5.7 In view of the facts as brought out by the Assessing Officer in her order I find no infirmity in the order passed by the Assessing Officer."*

5. Against this order, the assessee is in appeal before us.
  
6. We have heard both the sides and perused the record. We find that initially, in this case, the matter of TDS refund has travelled to the Hon'ble High Court and the Hon'ble High Court directed the Revenue authorities to take appropriate decision. In this case, TDS was not claimed in the original return. Subsequently, TDS was claimed by a revised return. The relevant dates in this regard are as under:-
  - Original return filed on 30.11.1999 for AY 1999-2000. In this return, TDS refund was not claimed.

- Subsequently, by means of a revised return filed on 08.09.2000, the refund was claimed.

7. It is only the delay of approximately 8/9 months that has not been condoned and, hence, the assessee's plea for refund was not examined by the authorities below. As a matter of fact, the Id.CIT(A), in his order, has not even bothered to mention the date of filing of the return, revision thereof and the quantum of delay which he has found to be fatal. In our considered opinion, on the facts and circumstances, the authorities below have not properly applied their mind. In our considered opinion, on the facts and circumstances of the case and in the interest of justice, 8/9 months delay in filing the return cannot be said to be fatal to the claim of the refund by the assessee. Hence, we condone the delay and remand the issue to the file of the AO. The AO shall factually verify the amount of refund and pass an order as per law. We reiterate that the delay in filing the revised return has already been condoned by us. Needless to add, the assessee should be granted adequate opportunity of being heard.

8. In the result, this appeal filed by the assessee stands allowed for statistical purposes only.

Order pronounced in the open court on 13.01.2023.

Sd/-

[ASTHA CHANDRA]  
JUDICIAL MEMBER  
Dated, 13<sup>th</sup> January, 2023

Sd/-

[SHAMIM YAHYA]  
ACCOUNTANT MEMBER

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Copy to:

1. The appellant
2. The respondent
3. Ld. CIT(A) concerned
4. CIT concerned
5. DR ITAT "A" Bench, Delhi
6. Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,  
Delhi.