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

BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 3004/MUM/2022
Assessment Year: 2020-21
&
ITA No. 3005/MUM/2022
Assessment Year: 2021-22

Sanjeev Rajendra Pandit, Top floor Madhav Vilas, 8 Setalwad Road, Off Neapean Sea Road, Cumballa Hill, S.O., Mumbai-400026. **PAN No. AGYPP 4026 D** **Appellant**	**Vs.**	The Assistant Director of Income Tax (CPC), Post Bag No.2, Electronic City Post Office, Bangalore-560500. **Respondent**

Assessee by	:	Mr. Milin Dattani, AR
Revenue by	:	Mr. Aditya M. Rai, DR
Date of Hearing	:	18/01/2023
Date of pronouncement	:	24/01/2023

ORDER

PER OM PRAKASH KANT, AM

Bothe these appeals by the assessee are directed against two separate orders, both dated 29.09.2022, passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)']. Being common ground of

TDS credits involved in both these appeals, same were heard together and disposed off by way of this consolidated order for convenience.

2. The Parties agreed to take up, firstly the appeal for AY 2021-22 for adjudication. The grounds raised in said appeal are reproduced as under:

> *On the facts and circumstances of the case:*
>
> *1. The learned CIT(A) erred in confirming the action of the Assessing officer (CPC) restricting credit for the TDS to Rs. 1,63,196 as against credit of Rs. 1,78,032 claimed in the return of income in respect to rent income from property at Navprabhat Chambers thereby not granting credit for TDS of Rs. 14,836.*
>
> *2. The learned CIT(A) erred in confirming the action of the Assessing officer (CPC) of not granting credit of Rs. 64,458 being tax deducted at source u/s 206AA in respect to dividend income from Tata Steel Ltd.*
>
> *3. The learned CIT(A) erred in not appreciating that the appellant was entitled to credit of TDS as per the provisions of section 199 of the Income Tax Act, 1961.*
>
> *4. The learned CIT(A) erred in dismissing the appeal without appreciating that the tax on the rent and dividend had already been deducted at source and that the appellant*

cannot be called upon to pay the tax on such income in view of the provisions of Section 205 of the Act.

Relief Sought:

Your appellant prays that:

1. The learned Assessing officer be directed to grant full TDS credit of Rs. 3,93,891 as claimed by the appellant in the return.

2. Your appellant craves leave to add, to amend or delete the above ground on or before the final date of hearing.

The learned AO be directed not to recover the demand in respect of TDS deducted.

3. Briefly stated, facts of the case are that the assesse is an individual and filed his return of income on 28.01.2022 declaring total income of ₹87,26,230/-. In the return of income filed, the assessee claimed credit of tax deducted at source (TDS) of ₹3,93,891/- which included TDS credit of ₹1,78,032/- in respect of rental income from property at Navbharat Chambers and TDS of ₹64,458/- in respect of dividend income disbursed by M/s Tata Steel Ltd. In processing order passed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 28.03.2022, the Assessing Officer of Central Processing Centre, Bangalore restricted the TDS credit to ₹1,63,196/- in respect of TDS on rental income from property at Navbharat Chambers as against credit of ₹1,78,032/-

claimed in the return of income. The Ld. Assessing Officer also did not allow credit of the TDS of ₹64,458/- in respect of "dividend" income offered to tax under the head 'income from other sources.

3.1 Aggrieved with the denial of credit of TDS of ₹92,792/-, the assessee filed appeal before the Ld. CIT(A), however, could not succeed.

4. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

5. Before us, the assessee has filed intimation for payment of dividend issued by Tata Steel Ltd along with case laws relied upon by the assessee.

6. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. In the grounds raised, the assessee is aggrieved with restricting of the TDS credit by the Assessing Officer/Ld. CIT(A) in respect of the income form house property and income from dividend. In respect of income from house property, the assessee has provided breakup of receipt of rental income from Navbharat Property as under:

Month of which the rental income pertains	**Amount of rent received (₹)**	**Financial year in which rent is received**
April 20 to November 20	12,58,056	FY 2020-21
December 20 & January 21	3,14,514	FY 2021-22

February 21 & March 21	3,14,514	FY 2022-23

6.1 The contention of the assessee that for the rental income of ₹3,14,515/- in respect of month of February and March, which was received by the assessee in the month of April, 2022, the tax was deduction at source by the deductor in April 2022, which is reflected in subsequent year in Form No. 26AS for the assessment year 2023-24. The contention of the assessee is that though tax in respect of this part of rental income has been deducted and deposited in subsequent assessment year, the assessee following accrual system has declared the corresponding income in the year under consideration and therefore, credit of TDS to be allowed to the assessee against income declared in the year under consideration.

6.1.1 Similarly, details of income from dividend has been provided before the Ld. CIT(A) as under:

Sr. No.	**Folio No.**	**Gross dividend income**	**TDS @ 20%**
1.	S1S0061657	₹10,290	₹2,058
2.	S1S0036608	₹3,04,820	60,964
3.	S1S0035964	₹7,180	1,436
	Total	**3,22,290**	**₹64,458**

6.2 In respect of dividend income due to non-providing of PAN to the deductor, the deductor has deducted tax @ 20% u/s 206AS amounting to ₹64,458/-. The contention of the assessee is that due to non-providing of the PAN in Form No. 26AS, the Assessing Officer

has not allowed credit of TDS, though same was deducted by the deductor M/s Tata Steel Ltd. as per the table above.

6.3 Before us, the Ld. Counsel of the assessee has filed a letter from the deductor M/s Tata Steel Ltd. and provided details of tax deducted at source on the payment of dividend to the assessee.

6.4 We find that the Ld. CIT(A) has, on both the issues reproduced the facts of the case of the assessee as well as the relevant provisions of the Act and Income-tax Rules, 1962 (in short 'the Rules'). The relevant part of the same is reproduced as under:

> *"5.5 Section 199 of the Income Tax Act, 1961 deals with the credit of tax deducted. As per sub section (1), if any deduction is made as per the chapter XVII and paid to the Central Government, same shall be considered as payment of tax on behalf of the person from whose income the deduction was made. Sub section (3) further explains that CBDT may frame Rules in facilitating credit to be given in respect of Tax deducted. CBDT has framed Rule 37BA u/s 199(3). As per clause (4) of Rule 37BA, the credit of tax deducted and paid to the Central Government shall be allowed on the basis of the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority and 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. As per section 203 of the Income Tax Act, every person deducting the tax shall issue a certificate to the effect that tax has been deducted specifying the amount of tax so deducted, rate at which tax has been deducted and other particulars that may be prescribed. Rule 31 framed under section 203, ordains that certificate should be issued in Form 16 in case of deduction u/s 192 annually or in Form 16A in case of deduction of tax under any other section quarterly. Thus, from above it is evident that each deductor will issue Form 16/16A to every payee individually. It is to be noted that the conclusive proof regarding deduction of tax available with the assessee is Form 16/16A. Form 26AS compiled by the Department is based on the data uploaded by the deductors and then reconciled with challans by the Department. in the instant case, at the time of processing ng proof of tax deduction of the impugned sum was available before the A by way of Form 16A or 26AS as admittedly the deduction was made in the subsequent financial year in respect of payment of rent. With resped to the TDS of Rs. 64,458/- against dividend credit of Rs. 3,22,290/- from 32,229 shares of Tata Steel Ltd as well the appellant has not submitted any proof of production of form 16A before the AO evidencing deduction of TDS."

6.5 The Ld. CIT(A) has also referred to the decision of the Hon'ble Delhi High Court on the issue of allowing tax credit. The relevant part of the order of the Ld. CIT(A) is also reproduced as under:

"5.6 It is aloes relevant to mention here another aspect of credit of TDS when deduction has actually been made but credit is not available to the deductee. Pursuant to the landmark judgement of Hon'ble Delhi High Court, the Central Board of Direct Taxes (CBDT) issued Instruction No. 5 dated July 8,2013 wherein vides paragraph 3 it has directed the Assessing Officers that whenever an assessee approaches AOs with requisite details and particulars in the form of TDS certificate as evidence against any mismatched TDS amount, the said officer shall, after due verification, allow the credit of the same to the assessee. The relevant paragraph is reproduced for ready reference - "3. In view of the order of the Hon'ble Delhi High Court (reference: paragraph 50 of the order); it has been decided by the Board that when an assessee approaches the Assessing Officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee. However, the Assessing Officer is at liberty to ascertain and verify the true and correct position about the TDS with the relevant AO (TDS). The AO may also, if deemed necessary, issue a notice to the deductor to compel him to file correction statement as per the procedure laid down." The appellant's case in present appeal qua rental payment is not concerned with the subject matter of the circular as the former is about

seeking credit where tax was to be deducted subsequently. As far as TDS on dividend already deducted but not finding mention in 26AS due to lack of PAN data, the appellant has all the liberty to make good use of the circular by providing requisite details of TDS certificate in form 16A before the AO to claim credit of the correct amount of TDS."

6.6 After referring the provisions of the law as well as judicial precedent on the issue, the Ld. CIT(A) concluded that for claiming the benefit of the TDS, the assessee was required to comply, ***firstly***, produce TDS certificate, ***secondly***, to show that income subjected to TDS is disclosed in return of income of the assessment year as assessable. The relevant finding of the Ld. CIT(A) is reproduced as under:

"5.7 The deduction of tax at source does not necessarily, or is not required to, match alongside the corresponding income, recognition of which by the recipient could be either on accrual or on receipt basis. The accrual of the tax liability on income would arise only on the same being/becoming assessable. There is thus an inherent mismatch, in terms of time, between the payment of tax (per TDS) and the accrual of tax liability against the corresponding income qua the relevant provisions of law. It is in view of and to address this mismatch in time, so that the tax stands deducted while the corresponding income, though accrued has yet to be received or though received, as by way of an advance, is yet to accrue, that the law-per section 199 r/w ss. 190 &

191 and Rule 37BA] clarifies that the credit for the TDS shall be available for the year for which the corresponding income is assessable. It wold be evident from plain reading of section 199 of the Act and Rule 37BA of Income Tax rules, 1962 that credit is to be given to the assessee for the amount so deducted in the assessment made under this Act for the assessment year for which Such income is assessable. So important conditions for getting benefit of TDS as per section 199 of the Act are

(a) the assessee should produce the certificate for the amount of tax deducted at source;

(b) show that income subjected to TDS is disclosed in the return of the assessment year as 'assessable'.

Thus, both the above-mentioned conditions are to be satisfied. It is, therefore, clear that the assessee will not be entitled to have benefit or credit for the amount though mentioned in the certificate for the assessment year if income relatable to the amount is not shown and is not assessable in that assessment year. If instead of entire income referable to amount of tax deducted, only a portion of income is found assessable the benefit has to be allowed only on the portion shown. If balance income, on account of system of accounting followed by the assessee or for some other reason is found to be assessable in future, then the credit for the balance TDS can be allowed only in future when income is assessable. Credit allowed on pro rata basis in the year in which the certificate is issued and also

in future where balance or such income is found to be assessable is as per the mandate of provision of section 199 of the Act. Any amount which has not been assessed in any year but referred in the TDS certificate, cannot be claimed under section 199 of the Act.

5.8 Section 199 of the Act has two objectives - one to declare the TDS as payment of tax on behalf of the person on whose behalf the deduction was made and to give credit for the amount so deducted on the production of the certificate in the assessment made for the assessment year for which such income is assessable. The second objective mentioned in section 199 is only to answer the question as to the year in which the credit for TDS shall be given. It links up the credit with assessment year in which such income is assessable. In other words, the Assessing Officer is bound to give credit in the year in which the income is offered to tax. This section 199 does not empower the Assessing Officer to determine the year of assessability of the income itself but it only mandates the year in which the credit is to be given on the basis of the certificate furnished. In other words, when the assessee produces the certificates of TDS, the Assessing Officer is required to verify whether the assessee has offered the income pertained to the certificate before giving credit. If he finds that the income of the certificate is not shown, the Assessing Officer has not only to give the credit for TDS in that assessment year and has to defer the credit being given to the year in which the income to be assessed. It does not have any mandate to

allow credit even where TDS is not deducted but to be deducted in future."

6.7 We find that though the Ld. CIT(A) has referred to the provisions of the law and Rules thereon, however, he did not considered the request of the assessee for allowing credit that either in the year under consideration or in the subsequent assessment year. We are of the opinion that the deductor has been authorized by the Department to deduct tax at source on the income of the assessee and deposit into Government account. The credit of same has to be allowed to the assessee as per the provisions of the law and the Rules made thereunder and the Department cannot simply deny that no credit shall be granted because in the year in which assessee offered income, tax has not been deducted and not appearing Form No. 26AS, whereas in subsequent assessment year TDS is appearing in Form No. 26AS, but corresponding income is not reflecting there. The Department cannot swallow tax paid by the assessee and deny credit of tax deducted, which pertains to the assessee. In the instant case, the assessee has offered the income following the accrual system. As far as rental income is concerned, if tax has been deducted and deposited in subsequent year, the assessee should be allowed credit of same in the year under consideration of tax which has been deducted subsequently. However, the assessee could not be allowed the benefit of the interest on refund which arise if any on account of credit of tax deducted

and deposit in the subsequent assessment year. We accordingly set aside the finding of the Ld. CIT(A) on the issue-in-dispute and direct the Ld. Assessing Officer to verify the amount of tax deducted and deposited in respect of income from rental property which has been shown by the assessee in the year under consideration and allow the credit as directed above. As far as TDS credit in respect of divided income is concerned the assessee is directed to furnish TDS certificate issued by the deductor and the Ld. Assessing Officer is directed to allow the credit of the said TDS after due verification. The Assessing Officer cannot simply decline the credit of TDS and he is bound to verify TDS certificate issue in accordance with provisions of law. Further, the Assessing Officer is also directed to verify if any relief has already been granted in the rectification application filed by the assessee. If so then further benefit of TDS credit may not be allowed. In view of the our direction above, the grounds of appeal of the assessee are accordingly allowed for statistical purposes.

7. The grounds raised by the assessee in assessment year 2020-21 in ITA No. 3004 is reproduced as under:

> *On the facts and circumstances of the case :*
>
> *1. The learned CIT(A) erred in confirming the action of the Assessing officer (CPC) restricting credit for the TDS to Rs. 2,83,928 as against credit of Rs. 3,13,600 claimed in the*

return of income in respect to rent income from property at Navprabhat Chambers thereby not granting credit for TDS of Rs. 29,672.

2. The learned CIT(A) erred in not appreciating that the appellant was entitled to credit of TDS as per the provisions of section 199 of the Income Tax Act, 1961.

Relief Sought:

Your appellant prays that:

The learned Assessing officer be directed to grant full TDS credit of Rs. 3,13,600 as claimed by the appellant in the return.

Your appellant craves leave to add, to amend or delete the above ground on or before the final date of hearing.

The learned AO be directed not to recover the demand in respect of TDS deducted.

8. We find that issue involved in ground No.1 is identical to TDS credit in respect of rental property which we have adjudicated in assessment year 2021-22. Therefore, following our finding in assessment year 2021-22 this ground of the appeal is also restored to the file of the Assessing Office for deciding after due verification and allow the credit accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, both these appeals are allowed for statistical purposes.

Order pronounced in the open Court/under Rule 34(4) of the ITAT Rules, 1963 on 24/01/2023.

Sd/-	**Sd/-**
(ABY T VARKEY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/01/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai