

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” “A” BENCH: BANGALORE**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

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| ITA Nos.1185 to 1189/Bang/2022 |
| Assessment Years: 2010-11 to 2014-15 |

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| Rohith Chintanapalli Ramesh 678, 11 th Main, 4 th Block Jayanagar Bengaluru 560 011 PAN NO : ADFPR8480B | Vs. | ITO Ward-7(2)(1) Bangalore |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Smt. Sheetal, A.R. |
| Respondent by | : | Shri Ganesh R. Ghale, Standing Counsel for Revenue |

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| Date of Hearing | : | 08.02.2023 |
| Date of Pronouncement | : | 08.02.2023 |

O R D E R

These appeals by assessee are directed against different orders of CIT(A) dated 18.11.2022 for the assessment years 2010-11 to 2014-15, wherein lower authorities denied the benefit for TDS Certificates issued in favour of CV Trust & R.K. Associates.

2. The ld. A.R. submitted additional evidences along with applications as follows showing the valid share of ownership of the property with respect to the TDS claimed by the assessee.

- a) Copy of Trust Deed along with Form ST-2 service tax registration certificate

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- b) Form ST-1 service tax registration application applied for the purpose of service tax compliance
- c) Copy of Deed of AOP

2.1 The ld. A.R. submitted that these additional evidences are not produced on earlier occasion due to bonafide mistake and prayed that these may be admitted for adjudication.

2.2 After hearing both the parties, I concede to the request of the ld. A.R. and in the interest of justice, I admit these additional evidences for adjudication.

3. The assessee herein said to be co-owner of the various properties along with CV Trust & R.K. Associates and the assessee claimed for the credit of TDS benefit, wherein the certificates were in favour of CV Trust & R.K. Associates. According to the assessee the AO has not appreciated the provisions of section 26 of the Income-tax Act, 1961 ['the Act' for short], wherein it is provided that in case of AOP with members having definite and ascertainable share in immovable property to the assessed in the hands of co-owner/members and as such TDS credit has to be given as per section 26 of the Act. According to the ld. CIT(A), the TDS certificates were not issued in the name of the assessee. The assessee claimed the credit of TDS certificates issued in favour of CV Trust & R.K. Associates. According to assessee as per section 26 of the Act, impugned property income earned by the above two entities i.e. CV Trust & R.K. Associates along with assessee from the immovable property held by these joint ventures should be shared in the proportion of definite share held by co-owners. The assessee has claimed that he has definite and ascertainable share in the immovable property at 10% and 25% held by these two entities.

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3.1 The ld. CIT(A) asked for following documents:

- a) Purchase/sale deed of the properties from which assessee has claimed rental income and TDS certificates in assessee's reply.
- b) Copy of RI/assessment order for CV Trust & R.K. Associates respectively for AY 2010-11.
- c) Valid documents showing share of ownership of the property with respect to TDS claimed by the assessee.
- d) Copy of deed of AOP (CV Trust & R.K. Associates)

3.2 However, the assessee failed to produce above documents. Hence, the ld. CIT(A) observed that the benefit of TDS credit cannot be given to the assessee in the absence of those documents.

4. The ld. A.R. submitted before me that the two co-owners i.e. CV Trust & R.K. Associates have not claimed benefit of TDS though the TDS certificates are in their names and as such the assessee being the co-owner be granted benefit of TDS and the revenue cannot be enriched by this amount of TDS at the cost of assessee.

5. The ld. D.R. strongly opposed the argument of the assessee's counsel and submitted that the assessee failed to submit copies of returns of CV Trust & R.K. Associates to show that they have not claimed the TDS benefit covered by in these appeals. Hence, the claim of assessee shall not be entertained.

6. I heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that assessee ha enclosed the TDS details, which are in the name of CV Trust & R.K. Associates. The credit for these TDS certificates has never been claimed by these two assessees and the same benefit to be given to the present assessee in the interest of justice. In my opinion, the ld. CIT(A) called for copies of returns/assessment orders

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of CV Trust & R.K. Associates for all these assessment years but assessee failed to produce the same. Before me, it was submitted that these two assesseees have not filed the regular returns of income and also not claimed refund of TDS or credit for TDS. If it is so, or if these two assesseees have not claimed benefit of impugned TDS disputed before me, the same be granted to the assessee after verifying the necessary records. Accordingly, the issue in dispute is remitted to the file of AO for fresh consideration with direction to assessee to prove the above facts before the A.O.

7. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 8th Feb, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 8th Feb, 2023.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.