

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 725/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

Asst. Commissioner of
Income Tax,
Circle-5(1),
Hyderabad

अपीलार्थी / Appellant

M/s. NSL Renewable
Power Private Limited,
Hyderabad
[PAN No. AABCN6009L]

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Pratik Shah, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 15/02/2023
घोषणा की तारीख/Pronouncement on: 28/02/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 10/08/2022 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of NSL Renewable Power Private Limited ("the assessee") for the assessment year 2017-18, Revenue preferred this appeal.

2. Revenue preferred this appeal with a delay of 43 days stating that the order of the first appellate authority was received by the PCIT on 15/09/2022 but due to work load on account of preparing replies to various writ petitions, filed against the order under section 148A(d) of the Act, the delay in preferring the appeal occurred. There is no reason as to why this explanation of the Revenue cannot be accepted. Generally, Revenue does not stand to gain by allowing the appeal to be barred by limitation. The highest that would happen by condoning the delay is that a cause could be decided on merits. As a matter of fact, Ld. Counsel for the assessee fairly concedes to condone the delay. Recording the same, we condone the delay and proceed to hear the matter on merits.

3. Only issue involved in this matter is whether the TDS in form 26AS is allowable to the assessee? Brief facts of the case relevant for this appeal are that in the return of income filed on 31/3/2018 for the assessment year 2017-18, the assessee claimed refund of the tax deducted at source (TDS) to the tune of Rs. 3,42,845/- in accordance with the entries in form 26AS as on the date. According to the assessee form 26AS was revised letter and the tax deducted at source was increased to Rs. 2,00,71,893/-, and the assessee submitted during the assessment proceedings, a reconciliation of income as per books and form 26AS, but the learned Assessing Officer restricted the TDS credit to Rs. 3,42,845/- as claimed in the return of income and refused to consider the TDS reflected in the revised form 26AS. When the assessee filed rectification application claiming the TDS, learned Assessing Officer rejected the same stating that the same was not claimed during the scrutiny proceedings.

4. When the assessee preferred appeal against the order dated 28/08/2010 passed under section 154 of the Act, learned CIT(A) directed the learned Assessing Officer to allow credit of TDS if corresponding

income was also shown in the ITR. Revenue is aggrieved by such a direction issued by learned CIT(A) to the learned Assessing Officer.

5. Learned DR submitted that the excess claim of TDS made by the assessee was not claimed by the assessee in the return of income nor during the assessment proceedings. In such situation, the learned Assessing Officer being bound by the decision of the Hon'ble Apex Court in the case of M/s. Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC) rightly refused to consider the claims beyond the return of income either original or revised, as the case may be.

6. Per contra, it is the submission by the learned AR that when once the learned Assessing Officer considered the corresponding income for taxing the same, it is not open for the learned Assessing Officer to refuse to allow credit of the corresponding TDS. Learned AR submitted that the learned CIT(A) rightly followed the circular of CBDT and, therefore, no interference is required.

7. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that for taxation purpose, the learned Assessing Officer considered the income relevant for the TDS reflected in form 26AS as revised. Circular No. 14(XL-35) dated 11/04/1955 issued by Board of Revenue under Income tax Act, 1922 explains that –

“Officers of the department must not take advantage of ignorance of an assessee as his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate some refund is due to him. The attitude would, in the long run, benefit the department, for it would inspire confidence in him that may be sure of getting a square deal from the department.....”

8. It is, therefore, clear that when the learned Assessing Officer considered the corresponding income and has before him all the relevant

facts in the shape of form 26AS as on the date of assessment, he is duty bound to assist the assessee, if the assessee is not aware of the discrepancy in respect of the income as per books and as per form 26AS. When form 26AS along with the reconciliation of income as per books and form 26AS was produced before him, learned Assessing Officer cannot accept the income for tax purpose and refuse to allow credit of corresponding TDS. Both must go hand in hand.

9. With this view of the matter, we do not find any illegality or irregularity in the findings of the learned CIT(A) and accordingly decline to interfere with his findings. Appeal is devoid of merits and consequently dismissed.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 28th day of February, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 28/02/2023

TNMM

Copy forwarded to:

1. The ACIT, Circle-5(1), Hyderabad.
2. M/s.NSL Renewable Power Private Limited, 8-2-684/2/A, NSL Icon,
Road No.12, Banjara Hills, Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD