

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri George George K., Judicial Member  
and**

**Ms. Padmavathy S., Accountant Member**

<b>ITA No. 790/Coch/2022</b> (Assessment Year: 2011-12)		
Shri Prem Mukundan No.51/7/1, Chitrakoot Ratna Avenue, Richmond Road Bangalore 560025 PAN – AVTPM5093R	vs	The Income Tax Officer Ward - 2(2), Kochi
(Appellant)		(Respondent)

Assessee by:	Shri Deepak Padmanabhan, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of hearing:	28.02.2023
Date of pronouncement:	03.03.2023

**ORDER**

**Per: George George K., J.M.**

This appeal at the instance of the assessee is directed against the order of the CIT(A)/NFAC, Delhi dated 25.05.2022 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2011-12.

2. The assessee has raised the following grounds of appeal: -

- “1. *The Commissioner (Appeals) has erred in not giving credit to IDS of State Bank of India to the tune of Rs.2,08,176/- and Canara Bank to the tune of Rs.15,011/-.*
2. *The Learned Commissioner (Appeals) has not considered the opinion of your Appellant before passing the impugned order,*
3. *The Learned Commissioner (Appeals) has failed to appreciate that the Assessee has accounted the income on which tax has*

*been deducted and hence he was eligible for TDS credit on the said income.*

4. *The Assessing Officer has failed to understand that the assessee is being penalized for no fault of his.*
5. *The Assessing Officer has not considered the valid explanation submitted by the Assessee in this regard.”*

3. The brief facts of the case are as follows: -

The assessee is a senior citizen aged 70 years. For AY 2011-12 return of income was filed on 11.07.2011 declaring total income of Rs.18,55,120/- from pension, house property and interest. In the said return of income the assessee had declared interest income of his deceased wife from SBI and Canara Bank and claimed TDS credit on the same. Intimation under Section 143(1) of the Act was issued on 13.02.2013, disallowing TDS credit in the name of assessee's wife.

4. Aggrieved, assessee filed appeal before the first appellate authority. The CIT(A) confirmed the view taken by the CPC in the intimation issued under Section 143(1) of the Act. The relevant findings of the CIT(A) read as follows:-

*“In the instant case, the interest income accrued to Late Smt. Shobana Prem and accordingly TDS was deducted and the credit was given to her. Since she was a separate entity from her husband, the Appellant, the TDS credit now cannot be given to the appellant, even though he has declared the corresponding income, in his Return of Income, on his own accord. In this case, as per the Appellant, the due credit, part, is already appearing in the 26AS statement of his late wife.*

*Considering the facts as mentioned above, the Appellant's ground, for allowing the TDS deducted, on the income earned by his late wife and TDS deducted in his late wife's name, cannot be claimed by the Appellant.”*

5. Aggrieved by the order of the CIT(A) the assessee has filed the present appeal before the Tribunal. The learned A.R. submitted that the assessee had

declared the income of his deceased wife in his return of income and the necessary credit for the TDS also ought to have been granted. The learned A.R. had relied on the latest order of the Bangalore Bench of the Tribunal in the case of M/s Hotel Ashok Garden vs. ITO in ITA Nos. 12 to 15/Bang/2023 (order dated 06.02.2023) in support of his contention.

6. The learned D.R., on the other hand, supported the of the CIT(A).

7. We have heard the rival contentions and perused the material on record. The solitary issue raised in this appeal is whether the assessee is entitled to get TDS credit of his deceased wife (admittedly income of the same was offered to tax in assessee's return of income). The relevant statutory provision, namely Section 199 of the Act and Rule 37BA of the I.T. Rules, 1962 reads as follows: -

*“Credit for tax deducted.*

*199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*

*(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of (ax has been made.*

*(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of, giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given”*

8. Rule 37BA of I.T. Rules 1962 is reproduced below for ready reference: -

*“[Credit for tax deducted at source for the purposes of section 199.*

*37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information*

*relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.*

*(2) [(i) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee :*

*Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule ( 1)*

*(ii) The declaration filed by the deductee under clause (i) shall contain the. name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*

*(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.”*

9. In this regard, it is claimed that the assessee has filed the Declaration under Rule 37BA to claim the credit in his name. However the same would not be in conformity with Rule 37BA of the I.T. Rules, since the deductee has to file declaration and she had expired. At this juncture, we place reliance on the order of the Ahmedabad Bench of the Tribunal in the case of *Mirant Navinbhai Parikh V The DCIT Circle International Tax Vadodara, ITAT Ahmedabad, [ITA No. 178/Ahd/2021]* (order dated 22,04,2022). The Ahmedabad Bench of the Tribunal on facts which are similar to the present case had held as follows: -

*“7. We have given our thoughtful consideration and perused the material available on record. In the instant case, we find that when the Fixed Deposit of income of Rs.13,42,190/- which was the income of the deceased father of the assessee, but offered by the assessee in his individual's hands being the sole legal heir of deceased father, the Revenue cannot deny the benefit of TDS made in the hands of the assessee's father.*

*7.4. Ongoing through this judgement, it is crystal clear that there are provisions of under the IT Act: namely, section 199 of the IT Act, 1961 and*

*Rule 37BA of the IT Rules, 1962 and proper mechanism is also provided under the Act and Rules. Thus, applying the ratio of the above judgement also, the assessee is entitled to get credit on TDS of Rs. 1,34,220/- which was deducted in the PAN of his late father. However, the entire income is offered by the assessee in his individual capacity as sole legal heir. Apart from that, the assessee also paid self-assessment tax of Rs.2,70,000/- on the above income. Thus, the grounds of appeal raised by the assessee; namely, Ground Nos.2 & 3 are allowed.*

*8. -As far as ground Nos.4 & 4.1. of appeal are concerned, the same are charging of interest u/s.234B & 234C of the Act, which are consequential in nature and, hence, no separate adjudication is required. Thus, these grounds of appeal raised by the assessee are allowed.*

*In the present case your Appellant's wife passed away and due to the same your Appellant enjoyed the interest received from the deceased wife's deposit and dutifully declared the same to tax. And hence, your Appellant is eligible to get the credit of his deceased wife's TDS as he has declared the income owing to the said TDS."*

10. The Hon' High Court of Andhra Pradesh in the case of Commissioner of Income Tax vs. Bhooratnam & Co. I.T.T. Appeal Nos. 117 & 222 OF 2012 November, 23, 2012, it was held as follows: -

*"17. In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a Director of the assessee company. They have considered the terms of the agreement dated 12-03-2003 among the parties to the joint venture and held that credit for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has not filed return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee.*

*18. Rule 37BA is a procedural provision dealing with the manner of giving credit for tax deducted at source for the purposes of section 199. It therefore applies to pending proceedings. As observed in State of Madras v. Lateef Hamid & Co AIR 1972 SC 1781, where a new procedure is prescribed by law, it governs all pending cases.*

19. In *Tikaram & Sons v. Commissioner of Sales Tax* AIR 1968 SC 1286 it was held that alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. The amendment to Rule 37 BA mentioned above which has been introduced by the Income Tax (8<sup>th</sup> amendment) Rules, 2011 notified vide Notification No. 57/2011 dated 24-10-2011, being procedural in nature, would have retrospective effect and has to be given effect to.

20. The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law.

21. Therefore, in our view, the Assessing Officer erred in denying the benefit of the TDS mentioned in the TDS certificates filed by the assessee on the ground that the TDS certificate is issued in the name of the joint venture or a Director and not the assessee."

11. The Hon'ble High Court Of Delhi, Court on Its Own Motion v. Commissioner of Income-tax W.P.(C) No. 2659 OF 2012 AUGUST 31, 2012 held as follows: -

"The second aspect relates to credit of TDS by the taxpayers even when tax is not been credited or paid to the government We do not think that it will be appropriate to address this question in a PIL. We have entertained this PIL not to decide individual claims but in view of the general problems faced by the tax payers specially small tax payers/individuals regarding issue of refunds, which are denied on the basis of wrong or bogus demands or incorrect record maintenance and the problem faced by them in getting full credit of the tax. which is deducted from their income and paid to the Revenue. The problem is apparent, real and enormous. It has escalated because of Centralized Computerization and problems associated with the incorrect and wrong data which is uploaded by both the deductors or payees and the Assessing Officers The issue is of general governance, failure of administration, fairness and arbitrariness. The magnitude of the problem and the number of tax payers adversely affected thereby is apparent from the counter affidavit, wherein it is admitted that 43% and 39% of the returns in Delhi zone for the Financial Year 2010-11 and 2011-12 respectively were defective. Substantial number of these defaults relate to mismatch of TDS details and the tax payers have been denied benefit of TDS claimed by them. For the Financial Year 2010-11, the approximate demand created in Delhi Zone because of the defective returns was

*Rs.3000 crores, which stands reduced to Rs.1900 crores after the tax payers approached the Assessing Officers for corrections. Every attempt possible has to be made to redress the grievance of the tax payers. The tax payers should not be made to run around, make repeated visits to deductor or the Assessing Officer. Rejection of TDS, which has been deducted and paid, hurts the assessee and puts him to needless inconvenience, harassment and costs. It gives bad name to the Revenue."*

12. The Bangalore Bench of the Tribunal in the case of Hotel Ashok Garden (supra) has held that though the liquor licence stands in the name of Shri Raju S. Shetty (partner of assessee firm) and the tax collection at source (TCS) was in the name of Raju S. Shetty, the assessee firm was entitled to the benefit of TCS. The relevant finding of the Bangalore Bench of the Tribunal reads as follows: -

*"7. I have heard the rival submissions. Learned Counsel for the assessee brought to my notice the decision of the ITAT, Jaipur Bench, in the case of Jai Ambey Wines Vs. ACIT, order dated 11.01.2017. In the said order, identical issue with regard to claim of TCS in the hands of the partnership firm when the licence stands in the name of the partners came up for consideration. The Hon'ble ITAT, Jaipur Bench, after referring to the statutory provisions viz., sections 190, 199, 206C of the Act and Rule 37BA(2)(i) of the Income Tax Rules, 1962 (hereinafter called 'the Rules'), held that the assessee firm should be given benefit of credit for TCS made in the hands of the partner. The following are the relevant observations of the Tribunal:*

*"2.6 We have heard the rival contentions and perused the material available on record. In order to appreciate the arguments, it would be relevant to refer to the provisions of Section 190, Section 199, Section 206C and the Rule 37BA(2)(i) of Income tax Rules.*

*Section 190 reads as under:*

*"(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of section 192, as the case may be, in accordance with the provisions of this Chapter.*

*(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4."*

*Section 199 reads as under:*

*"(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*

*Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.*

*The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given."*

*Section 206C reads as under:*

*"(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:*

**TABLE**

<i>Sr. No.</i>	<i>Nature of goods</i>	<i>Percentage</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(i)</i>	<i>Alcoholic Liquor for human consumption</i>	<i>One per cent</i>
<i>(ii)</i>	<i>Tendu leaves</i>	<i>Five per cent</i>
<i>(iii)</i>	<i>Timber obtained under a forest lease</i>	<i>Two and half per cent</i>
<i>(iv)</i>	<i>Timber obtained by any mode other than under a forest lease</i>	<i>Two and one- half per cent</i>
<i>(v)</i>	<i>Any other forest produce not being timber or tendu leaves</i>	<i>Two and one-half per cent</i>
<i>(vi)</i>	<i>Scrap</i>	<i>One per cent</i>
<i>(vii)</i>	<i>Minerals, being coal or lignite or iron ore</i>	<i>One per cent</i>

*Provided that every person, being a, seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.*

*Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing, in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.*

*The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.*

*(2) The power to recover tax by collection under sub-section (1) or sub-section (1C) or subsection (1D)] shall be without prejudice to any other mode of recovery."*

*Rule 37BA(2)(i) of Income tax Rules as amended, by the Income Tax (Eight amendment) Rules 2011 reads as under:*

*"Where under any provisions of the Act, the whole or any part of income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of tax deducted at source, as the case may, shall be given to the other person and not to the deductee.*

*Provided that the deductee files a declaration with the deductor and deductor reports the tax deduction in the name of the other person in the information relating to deduction referred to in sub-rule (1)."*

*2.7 The essence of the above stated provisions and corresponding rules is that the tax deducted at source (TDS) is nothing but tax, and credit for TDS should go to the person in whose hands the income is rightfully and finally assessed to tax in accordance with law irrespective of the person in whose hands the TDS has been deducted and TDS certificate has been issued at first place. If we look at the provisions of section 206C read with section 190 of the Act, the nature of tax collection at source (TCS) is exactly identical to TDS and it is in the nature of tax on income which has been collected at source in respect of specified business and the nature of goods as specified in section 206C of the Act. In light of above, the credit for TCS should be given to the assessee which is finally and lawfully assessed to tax in respect of the corresponding income on which TCS has been collected. The fact that there are no specific rules which have been provided in the Income tax Rules in respect of credit of TCS in such situations on the lines of Rule 37BA, in our view, doesn't disentitle the assessee to claim credit of TCS in whose hands the income is finally assessed to tax. The reason for the same is that the nature of TCS is nothing but tax which has been statutorily recognised in the Income tax Act, and the Rules are enabling and procedural in nature and absence thereof cannot result in denial of credit of TCS. This issue also find supports from the decision of the Coordinate Bench in case of ACIT, Circle-2, Udaipur vs. Shri Krishnalal Meel & party (supra).*

2.8 In the instant case, the Id. AR has submitted that the income has been brought to tax in the hands of the assessee firm and accordingly the credit for TCS should be granted to the assessee firm. In this regard, we find that there is no findings of fact by the AO in this regard and in A.Y. 2012-13 the Id. CIT(A) has stated that "the claim of the appellant that all the income of partners of the firm has been include in the income of the appellant is also not fully verifiable from the documents filed by the appellant."

2.9 In light of above discussions, we set-aside the matter in both the years to the file of the AO with the directions to verify whether the corresponding income in respect of which TCS has been claimed by the assessee firm has been brought to tax in the hands of the assessee firm or not. Where after due examination and verification, the AO find that the corresponding income has been brought to tax in the hands of the assessee firm, the AO is directed to allow credit for TCS in the hands of the assessee firm."

8. Learned DR, however, placed reliance on the decision of SMC Bench, Bengaluru, rendered in the case of Shri. Jayaprakasha Rai Vs. DCIT ITA No.681/Bang/2021, order dated 13.06.2022. I have perused the aforesaid decision and I find that the said decision was a case of transfer of licence from one person to another where pending the formality of transfer of licence, the credit was claimed by transferee of the licence in respect of TCS made in the hands of the predecessor in interest of transferor of the licence. In the aforesaid decision, the Tribunal made a reference to the provision of section 206C(4) and Rule 37-I of the Rules and came to the conclusion that credit should be given to TCS on the basis of the ultimate outcome before the Central Excise authorities regarding transfer of excise licence. The Tribunal also held in the aforesaid case that the AO can take necessary safeguards to ensure that the interest of the Revenue is not affected or prejudiced in any manner.

9. It can thus be seen that the facts of the case cited by the learned DR are different. Nevertheless, the fact remains that the Tribunal in all these decisions took the view that credit for TCS should not be denied when there is in fact no double claim made for the same TCS by 2 different persons. As we have already observed in the present case, Raju S. Shetty the licensee has given Indemnity Bond before the AO clearly specifying that he has not claimed credit for TCS in his return of income. In such circumstances, I am of the view that the claim ought to have been allowed. In this regard, I may also mention that if the ultimate conclusion on an application under section 154 of the Act can only be one particular conclusion, then even if in reaching that conclusion, analysis has to be done then it can be said that the issue is debatable which cannot be done in proceedings under section 154 of the Act. I am of the view, that

*the conclusion in the present case can only be one viz., that one person alone is to claim credit for TCS and it is only the assessee who has claimed credit for TCS and not the licensee. In such circumstances, the application under section 154 of the Act ought to have been entertained by the Revenue.*

*10. In this regard, learned DR also made submission that the decision of the ITAT, Jaipur Bench, was in relation to provisions of Rule 37BA of the Rules which is applicable to TDS and not to TCS and it is only Rule 37-I of the Rules which is applicable when credit for TCS is claimed. I am of the view that the very basis of the decision of the Jaipur Bench of ITAT in the case of Jai Ambey Wines (supra) is based on the facts that what is applicable for TDS should also be applicable for TCS and merely because there is no Rule identical to Rule 37BA(2)(i) of the Rules with reference to TCS provisions, it cannot be the basis for the Revenue to deny the legitimate claim for credit of TCS made by an assessee. For the reasons given above, I am of the view that the assessee should be given the benefit of credit for TCS. The AO is directed to give credit for TCS. Appeals of the assessee are accordingly allowed.*

*11. In the result, appeals of the assessee are allowed.”*

13. In the instant case the assessee's wife passed away and due to the same, assessee enjoyed the interest received from the deceased wife's deposit. The assessee dutifully declared the same to tax in his return of income. Hence, the assessee is eligible to get the credit of his deceased wife's TDS as he has declared the income pertaining to the said TDS. In taking the above view, we place reliance on the judicial pronouncement cited supra.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 3<sup>rd</sup> March, 2023.

Sd/-  
**(Padmavathy S.)**  
**Accountant Member**

Sd/-  
**(George George K.)**  
**Judicial Member**

Cochin, Dated: 3<sup>rd</sup> March, 2023

*Copy to:*

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT(A) -NFAC, Delhi*
- 4. The CIT -*
- 5. The DR, ITAT, Cochin*
- 6. Guard File*

*By Order*

*//True Copy//*

*Assistant Registrar*  
*ITAT, Cochin*

n.p.