

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITAs No.911 to 913/Del/2022
Assessment Years: 2016-17, 2018-19 & 2020-21

CAE Simulation Training Pvt. Ltd.,
3rd Floor, Dr. Gopal Das Bhawan,
28, Barakhamba Road,
New Delhi – 110 001.

Vs. DCIT,
Circle-4(2),
New Delhi.

PAN: AAEC7113K

(Appellant)

(Respondent)

Assessee by	:	Shri Nagesh Behl, Advocate
Revenue by	:	Shri Pankaj Khanna, Sr. DR
Date of Hearing	:	28.02.2023
Date of Pronouncement	:	24.03.2023

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the separate orders of the National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Years 2016-17, 2018-19 & 2020-21.

2. The sole issue agitated by the assessee in the captioned appeals is that the Id.CIT(A) has erred in law in ignoring the provisions of section 199 of the Income-tax Act, 1961 r.w.r 37BA(3) of the Income-tax Rules, 1962 which clearly provide that the credit of TDS shall be given for the assessment year for which the income is assessable.

3. On being asked by the Bench, the Id. Representatives of both the sides agreed that the facts and circumstances of all three appeals are similar and identical. The Id. AR, drawing our attention to a recent order of the *ITAT Delhi 'C' Bench dated 07.06.2022 in ITA No.6580/Del/2019 for AY 2016-17 in the case M/s Interglobe Enterprises Pvt. Ltd. vs. ACIT*, submitted that the issue involved in the present appeals is squarely covered by the order of the Tribunal and the matter may kindly be restored to the file of the AO for grant of credit in accordance with the law.

4. The Id. Sr. DR supported the orders of the authorities below. However, in all fairness, he did not dispute that the facts and circumstances of the appeals in hand are quite identical and similar to the facts and circumstances in the case of *M/s Interglobe Enterprises Pvt. Ltd. (supra)* wherein identical issue has been agitated and restored to the file of the AO with the following observations and findings:-

" 5. We have carefully considered the rival submissions. It is the case of the assessee that when the issue of availability of TDS credit in the appropriate assessment year is examined in the light of Section 199(3) r.w. Rule 37BA(3) of the Income Tax Rules, it would be clear that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. The assessee contends that the TDS credit is available in the financial year where the corresponding income has been referred by the assessee. A reference was made to the decision of the Co-ordinate Bench in the case of Greatship India Ltd. vs. DCIT in ITA No.5562/Mum/2018 order dated 8th June, 2020 to contend that the TDS credit cannot be postponed to a different assessment year on the basis of deduction carried out by the deductor when the accrued income from such transaction has been reported in the earlier assessment year.

6. A combined reading of Section 199(3) r.w. Rule 37BA(3) makes the position of law clear that credit for TDS is available in the year in which the income is reported and as a corollary, should not be deferred to some other assessment year. In the instant case, the Revenue has allowed the credit in the subsequent assessment year when the TDS is shown to have been credited in the form 26AS. However, as stated on behalf of the assessee, the corresponding income will not be found to be recorded and therefore such direction would belie the letter and spirit of Section 199(3)

and Rule 37BA(3) thereto. Thus, on first principles, we are inclined to agree with the stand taken on behalf of the assessee for eligibility TDS credit in the Assessment Year 2016-17 itself when income has been claimed to have accrued/ arisen and included for determination to chargeable income.

7. In the same vein, however, we note that no positive finding of the Revenue Authorities below is available to show as to whether tax credit for TDS reflected in form No. 26AS in Assessment Year 2017-18 has been claimed or otherwise in that assessment year. A verification of factual position is required to shun the possibility of double claim. The assessee shall be entitled to credit of TDS corresponding to the income reported in the Assessment Year 2016-17 itself provided; (i) the assessee has not claimed any credit of TDS in any other assessment year; (ii) an undertaking/affidavit is placed by the assessee before the Revenue Authorities to lend assurance that such credit claimed in Assessment Year 2016-17 shall not be doubly claimed in any other assessment year in future based on form 26AS or any other document. On being satisfied, the Assessing Officer shall grant the TDS credit in terms of observations made hereinabove. With these observations, the impugned order of the CIT(A) is set aside and restore back to the file of the Assessing Officer for grant of credit in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.”

5. In the present case also, we are unable to see any conclusion or findings by the authorities below to show as to whether tax credit for TDS reflected in Form No.26AS for relevant assessment years has been claimed or otherwise in that assessment year. Thus, verification and examination of factual position is required to rule out the possibility of double claim by the assessee. We make it clear that the assessee shall be entitled to credit of TDS corresponding to the income reported in the respective assessment year provided that: (i) the assessee has not claimed any credit of TDS in any other assessment year; and (ii) an undertaking or affidavit is placed by the assessee before the Revenue authorities giving assurance that such credit claimed for the relevant assessment years shall not be double claimed in any other assessment year in future based on Form No.26AS or any other document. We

also make it clear that being satisfied on the above issues, the AO shall grant TDS credit to the assessee. Accordingly, the impugned first appellate order is set aside and the matter for all three years is restored to the file of the AO for grant of TDS credit in accordance with the law.

6. In the result, the appeals filed by the assessee are allowed for statistical purposes only.

Order pronounced in the open court on 24.03.2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 24th March, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi