

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 156/Mum/2023
(A.Y.2020-21)**

M/s Shah & Chheda Homes Private Ltd 4, Mahavir Ornate, Plot No. 13B Sector 11, Near Balaji Garden Complex, Kopar Khairne, Thane - 400 709	Vs.	Commissioner of Income Tax (Appeals)- NFAC
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACS7318G		
Appellant	..	Respondent

Appellant by :	Makarand Palkar
Respondent by :	I Krishna Kumar

Date of Hearing	16.03.2023
Date of Pronouncement	27.03.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 21.11.2022 for A.Y. 2020-21. The assessee has raised the following grounds before us:

"Ground 1

The Honourable CIT(A) NFAC has erred in not deciding the additional grounds of appeal submitted during the 1st appeal hearing proceedings on 03-11-2022 vide ack no 775223051031122.

The appellant has claimed TDS of Rs.1,98,337/- u/s 1911A in his ROI which is not appearing in Form 26AS for the year under appeal but appearing in Form 26AS of subsequent assessment year ie AY 2021-2022

Relied Claimed:

The appellant is eligible for its TDS claim of Rs.1,98,337/- in the year under appeal and the same may please be allowed.

Ground 2

The Ld. AO (ADIT, CPC) Bangalore has erred in not giving credit of TDS of Rs.1,98,337/- claimed in the year under appeal as per the provisions of section 199 and income tax rule 37BA.

The appellant company states that the gross income corresponding to TDS was offered to tax in AY 2020-21 and did not claim the same TDS again in AY 2021-2022 even though the said TDS is appearing in the Form 26AS of AY 2021-2022

Copy of Form 26AS for AY 2020-21 and AY 2021-2022 is enclosed for your reference.

(Refer Annexure 1)

Relied Claimed:

The appellant company humbly requests your honour to allow its valid TDS claim of Rs.1,98,337/- in AY 2020-21 as corresponding income was offered to tax in the same year.

Ground 3

The appellant company prays for your leave to add, alter & amend the above ground of appeal, if necessary.”

2. Fact in brief is that assessee has filed return of income declaring total income of Rs.1,58,36,990/- on 15.01.2021. The CPC has processed the return of income u/s 143(1) of the Act on 24.12.2021. The assessee stated that claimed TDS of Rs.1,98,337/- u/s 194IA as it had sold flat No. 1101/- in its Mahabir Ornate Project Rs.2,67,12,000/- to Nikita Aggarwal who had deducted the TDS u/s 194IA of Rs.1,98,337/-. The assessee claimed that it had shown the entire sale proceeds in the profit and loss account for the year ended 31.03.2020 and also claimed TDS on the sale of flat as referred above. However, while processing the return of income filed by the assessee the credit of said TDS was not granted to the assessee during the year under consideration. The assessee also submitted that said TDS was appearing in 26AS of F.Y. 2020-21 (assessment year 2021-22) and not in the year on sale of flat i.e assessment year 2020-21. The assessee has

claimed the TDS in the year in which the gross sale were offered to tax in the assessment year 2020-21.

3. Heard both the sides and perused the material on record. During the course of appellate proceedings before us the ld. Counsel submitted that assessee has filed additional ground of appeal before the NFAC on 03.11.2022, however, the same was not adjudicated by the ld. CIT(A). In this regard, the ld. Counsel has also filed copy of additional ground of appeal filed before the ld. CIT(A) on the issue of not giving credit of TDS deducted u/s 194IA of Rs.1,98,337/-. We have perused the order u/s 250 of the Act passed by the ld. CIT(A) on 24.12.2021 and noticed that the additional ground of appeal filed by the ld. Counsel as referred above stating that credit of TDS claimed in the return of income has not been adjudicated by the ld. CIT(A). In the light of the above facts and circumstances we restore this matter to the file of the ld. CIT(A) for adjudicating the additional grounds of appeal on merit after affording reasonable opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open court on 27.03.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 27.03.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.