

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.1618/Mum/2022
(Assessment Year :2021-22)**

Late Russi Dinshaw Bahadurji by his legal heir, Mumbai, M/s. Kalyaniwalla & Mistry LLP, Esplande House, 2 nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400001	Vs.	Income Tax Officer Range 19(3)(1) Mumbai Room No.537, 5 th Floor, Aayakar Bhawan M.K.Road, Mumbai-400 020
PAN/GIR No.AACP4740N		
(Appellant)	..	(Respondent)

Assessee by	Shri N.M.Golvala
Revenue by	Ms. Richa Gulati
Date of Hearing	10/02/2023
Date of Pronouncement	27/04/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the impugned order dated 30/05/2022 passed by NFAC, Delhi in relation to the adjustment made u/s.143(1) on account of denial of TDS credit of Rs. 1,15,010/- for the A.Y.2021-22.

2. The grounds of appeal raised by the assessee reads as under:-

1. *The Appellant objects to the demand payable of Rs.1,13,010/*
2. *The Commissioner of Income Tax (Appeals) erred in upholding short grant of TDS credit to the extent of Rs. 1,15,010/-*
3. *Both the CPC and Commissioner of Income Tax (Appeals) erred in ignoring the fact that income corresponding to the TDS credit of Rs.1,15,010/- has been offered to tax and assessed as such.*
4. *The learned Commissioner of Income Tax (Appeals) erred in ignoring Rule 37BA(3), which was relied on by the appellant.*
5. *Having regard to the facts and circumstances of the case, the Appellant submits that the Assessing Officer and Commissioner of Income Tax (Appeals) be directed to grant TDS credit to the tune of Rs. 1,15,010/-*

3. The brief facts and the background of the case are that the assessee filed the return of income on 18/12/2021 declaring total income of Rs. 1,06,74,950/- including income received from the Deed of Settlement for K D Bahadurji, (Trustee R D Bahadurji) of Rs.16,43,425/-, TDS was claimed of Rs.7,53,318/- (including Rs.1,15,109/- in respect of the above mentioned Deed of Settlement, corresponding to the above mentioned income of Rs.16,43,425/-). The return was processed u/s 143(1) by Centralized Processing Centre, Bengaluru on 11 January, 2022, and a demand was raised of Rs.1,15,010/- on account of the grant of short credit.

4. It has been brought on record that Mr. Russi Dinshaw Bahadurji passed away on 21 July, 2018. An application was

made to the Hon'ble Bombay High Court for grant of Probate in respect of the last Will and Testament of the deceased on 28/06/2019. The said application is yet pending before Hon'ble Bombay High Court.

5. The background of the whole matter leading to denial of credit of TDS and the fact of the case has been stated to be: -

i) Deed of Settlement (trust) was settled on 25/01/1995 by the assessee, Late Mr. Russi D. Bahadurji for the benefit of his brother Mr. Khurshed D. Bahadurji, and succeeding him, his brother's wife Mrs. Bhikhoo Bahadurji. The brother and failing him, his widow was a life tenant, entitled to the entire annual income.

ii) On the demise of his brother, Khurshed D. Bahadurji, the original life tenant on 25/07/1997, his wife, Mrs. Bhikhoo Bahadurji became the life tenant, entitled to the annual income. While the life tenant Mrs. Bhikhoo Bahadurji was alive, the income of the Deed of Settlement was being assessed separately u/s 161(1) of the Income Tax Act. Therefore, the return of Income of the Deed of Settlement for K D Bahadurji, Trustee R D Bahadurji was filed separately under PAN AABTD3941Q, and the income was included therein.

iii) Mrs. Bhikhoo Bahadurji passed away on 12/06/2018 Mr. Russi D. Bahadurji was yet alive, and the trust reverted back to the settlor in accordance with para 15 of the Deed of Settlement. Mr. Russi D. Bahadurji passed away on

21/07/2018 (and the corpus of the trust fund now forms part of the assessee's estate.

6. Before us, Id. Counsel drew our attention to para 15 of the Deed of Settlement and para 21 of the will of the late Mr. Russi D. Bahadurji dated 03/02/2000 which is as under:-

Para 15 of the Deed of Settlement reads as under!

"15. While Mr. Russi Dinshaw Bahadurji is acting as the sole Trustee of this Trust Deed dies during the continuance of this Trust Deed then and in that event this Trust Deed shall come to an end and the then entire corpus of the Trust Fund together with the accrued income shall revert to his estate and be dealt with and disposed of as provide by his testamentary writing if any otherwise as if had died intestate."

Para 21 of the will of the Appellant (late Mr. Russi Dinshaw Bahadurji) dated 3rd February, 2000, which is reproduced as under:

"I am the sole Trustee of this Deed of Settlement and as per para 15 of the said Deed of Settlement dated 25th January, 1995 if I am the sole Trustee at the time of my death then the entire corpus of the Trust fund together with accrued income shall revert to my estate and be dealt with and disposed of as provided by my Testamentary writing, if any, otherwise as if I had died intestate. Therefore, at the time of my death if I am the sole trustee of this Deed of Settlement dated 25th January, 1995 the whole of the corpus and the accrued unutilised income of this trust fund will revert to my estate. "

4) Therefore, the entire income received by the 'Deed of Settlement for K D Bahadurji Trustee R D Bahadurji' (PAN AABTD3941Q) of Rs. 16,43,4257- is now part of the income of Late Russi D. Bahadurji (PAN: AACPB4740N the appellant herein) during the

year under consideration, and it was duly offered to tax in the hands of the appellant.

Details of the same are as under:

<i>Name of the Investee</i>	<i>Type of Income</i>	<i>Gross amount</i>	<i>TDS</i>
<i>Deed of settlement for K.D. Bahadurji, Trustee R D Bahadurji</i>			
<i>HDFC Mutual Fund</i>	<i>Dividend Income</i>	<i>4,25,539</i>	<i>33,688</i>
<i>HDFC Mutual Fund</i>	<i>Dividend Income</i>	<i>4,25,533</i>	<i>31,915</i>
<i>Franklin Templeton Mutual Fund</i>	<i>Dividend Income</i>	<i>6,60,086</i>	<i>49,506</i>
<i>HSBC Bank</i>	<i>Savings Interest</i>	<i>1,32,266</i>	<i>Nil</i>
<i>Total</i>	<i>(A)</i>	<i>16,43,425</i>	<i>1,15,109</i>
<i>Other Income of the assessee</i>	<i>(B)</i>	<i>1,00,31,522</i>	<i>6,38,208</i>
<i>Gross Total Income</i>	<i>(A) + (B)</i>	<i>1,06,74,947</i>	<i>7,53,317</i>

The income from the Deed of Settlement is disclosed separately in the Statement of Total Income of Late R.D. Bahadurji as 'Savings Bank Interest [from Deed of Settlement Account] and Dividend on Mutual Funds [from Deed of Settlement]

7. Simultaneously, a NIL return has been filed for the Deed of Settlement of K.D. Bahadurji (PAN: AABTD39410) and no TDS credit has been claimed in the said and NIL Return has been

filed for the Deed of Settlement for K.D. Bahadurji. The Deed of Settlement has also been processed u/s. 143(1) vide Intimation dated 05/05/2022 assessing the income at NIL and granting credit for 'NIL' TDS. It has been pointed out that the CPC system has, therefore, recognized that no TDS credit has been claimed in the hands of the Deed of Settlement and, therefore, it has been stated that there is no question of double credit being granted by the Department.

8. Assessee thus, contended that, in accordance with provisions of section 199 of the Act, once the assessee has offered and taxed the income in relation to the Deed of Settlement for K D Bahadurji, (PAN AABTD3941Q) in his own hands, therefore, he is entitled to claim the corresponding TDS credit. Further, it has been argued that there is a specific provision in the return form of A.Y 2022-23 for transfer of TDS credit. A nil return was filed for the trust on 18/12/2021 for this purpose, and no TDS credit was claimed by it. It was shown in the Form of the trust that TDS credit was being transferred to R.D Bahadurji (PAN: AACPB4740N).

9. In the return of income of the assessee, Late Russi Dinshaw Bahadurji, it has been shown that the TDS has been deducted under another PAN. Therefore, relevant disclosures with respect to the TDS credit have been made in the Returns of Income of the assessee and the Deed of Settlement for KD Bahadurji (PAN AABTD3941Q).

10. The ld. CIT(A) on going through the details observed that, CPC has denied the TDS credit on the ground that amount is not reflected in 26AS. He also rejected the assessee's contentions that return of the trust for A.Y.2021-22 wherein, it is clearly stated that trust has reverted back to the estate of Late Russi Dinshaw Bahadurji and therefore, the entire income for the year under consideration of Rs.16,43,424/- has been offered and taxed in the hands of Late Russi Dinshaw Bahadurji PAN:AACPB4740N. It was in light of this fact, no tax credit was claimed in the hands of the trust and accordingly, credit is being claimed in the hands of Late Russi Dinshaw Bahadurji. He also noted the fact that return of income of trust has offered no income and does not contain any tax credit in the ITR and it has been claimed in the PAN of Late Russi Dinshaw Bahadurji as per Rule 37BA(2). He also reproduced the tax credit part of the return in the impugned assessment order.

11. Ld. CIT (A) after taking note of Rule 37BA gave the following finding:-

“The appellant has stated that the claim for TDS has been made as per rule 37BA. As per Rule 37BA(2)(i) a declaration has to be filed with the deductor by the deductee, if the income is assessable in the hands of any other person. 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. The deductor has to thereon report the tax deduction in the hands of this other person as per provisions of Chapter XVII of the Income

Tax Act, 1961. As per the rule 37BA(2)(ii), 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.

6.2 In the given case while the income has been offered to tax in the hands of the appellant and tax credit claimed thereon in the return, there is no material available on record to show that a declaration as required under clause (1) and (ii) of rule 37BA(2) has been furnished to the deductor or that the deductor as per clause (ii) has furnished a certificate regarding tax deduction to the appellant. If such declaration was furnished by the deductee ie Deed of Settlement for K D Bahadurji Trustee R D Bahadurji, the deductor would have deducted tax in name and PAN of appellant as required under the rule and credit for the same would appear in the Form 26AS of the appellant.

6.3 The credit for tax has to be accorded strictly in conformity with section 199 of the Income Tax Act, 1961 read with rule 37BA of the Income Tax Rules, 1962. The wording of the rule 37BA(2) is crystal clear that credit for tax deducted on income assessable in hands of a person other than the deductee shall be given to the other person and not the deductee (in this case Deed of Settlement for K D Bahadurji Trustee RD Bahadurji), provided the deductee files declaration with the deductor and deductor reports the tax deduction in name of the other person as per provisions of Chapter XVII of the act. In the given case the TDS return filed by the deductor shows the tax deduction in the name of the Trust and it is duly reflecting in the 26AS statement of the Trust The appellant is claiming credit as per rule 37BA, for that it should have ensured that the Trust filed a declaration with the deductor giving proper name, address and Pan of the appellant in whose hands income was to be assessable. As the requisite procedure as laid down in rule 37BA(2) is not followed hence the tax credit is not available in the 26AS of appellant.

Under the circumstances the A.O is justified not allowing tax credit to the appellant while processing the return of income and the action of A.O. is held in accordance with Income tax law and procedure. Accordingly the grounds of appeal are dismissed.

12. We have heard both the parties at length and also perused the relevant finding given in the impugned order as well as the material referred to before us. The only issue involved here is that, CPC has wrongly denied credit of the TDS amounting to Rs.1,15,109/-. Before us, the ld. Counsel for the assessee after referring to the provisions contained in Section 199(1) of the Act submitted that, assessee is the original owner of the relevant income and has offered the same to tax and has been assessed on the same income. He admitted that there was a Deed of Settlement (private trust) created and income has been received in the bank account of Deed of Settlement and the deductor has reflected the PAN and Form 26AS of the Trust. However, the fact of the matter is that tax has been paid by way of TDS and Rs.1,15,109/- is in respect of income of Deed of settlement of Shri KD Bahadurji, therefore, there is no dispute and the tax has been paid. It is also undisputed fact that income belonging to Deed of Settlement / Trust was duly offered to tax in the return of income of Late Russi Dinshaw Bahadurji on PAN AACPB4740N under the head 'income from other sources'. The said income offered to tax by the assessee had duly been assessed and intimation u/s. 143(1) dated 11/01/2022 has been passed. It is also a matter of a fact that statement of total income of the Deed of Settlement as reflected in the return of income for

the relevant year reflects that no TDS credit has been claimed by the Trust. This also gets clarified by the intimation passed u/s.143(1) on the return of income filed by the CPC on 05/05/2022 for the relevant year.

13. Now the issue is, whether credit of TDS amount of Rs.1,15,109/- can be allowed to the assessee, i.e., Late Russi Dinshaw Bahadurji having offered the income and have been taxed on the same for the TDS amount. Consequently, in the case of the Trust, nil return was filed and no TDS credit has been filed. Another important fact is that in the return filed by the Deed of Settlement i.e. Trust, TDS credit has been transferred to Late Russi Dinshaw Bahadurji on his PAN and in the ITR form; same TDS credit has been claimed.

14. The provision of Section 199(1) reads as under:-

“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.”

15. Thus, deduction is allowed for the amount paid to the Treasury of Central Government which shall be treated as payment of tax on behalf of the person from whose income, the deduction was made where the TDS was deducted on income which has been shown and offered to tax by the assessee, Late

Russi Dinshaw Bahadurji even though TDS has been deducted in the case of Deed of Settlement / Trust. There is no provision of Section 199(1) that deduction cannot be allowed on the payment of tax who has offered the income. Rule 37BA which has been framed by the CBDT in terms of section 199(3) provides credit for tax deducted at source for the purpose of Section 199, which reads as under:-

“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.

3) (i) 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.

(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

16. Thus, Sub-Rule (2) provides that, if 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 given to the person whom payment has been made or credit has been given. The case of the ld. CIT(A) is that this procedure has not been followed by the assessee as provided in the Rule 37BA(2) and therefore, tax credit is not allowable and accordingly, the ld. AO is justified in denying the credit of TDS and on that ground, the appeal has been dismissed.

17. What needs to be seen is harmonious construction of Section 199(1) read with the conditions provided in rule 37BA

and intention of the legislature was not to deny the credit if the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, whereas the intention is to grant credit for the tax deducted at source on behalf of the person from whose income the deduction has been made. Now if the deductee has produced evidence or certificate that it has not claimed TDS as income belongs to the other person and in his return has not taken such credit, which fact has also been acknowledged by the department and there is no dispute by the department that the original deductee is never going to take the credit of TDS, then if deductor for some reason fails to report the tax deduction in the name of the other person; or does not 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, then, is other person who is showing the income in respect of which TDS has been deducted and the original deductee files a declaration with the deductor and also in the return of income, can credit of TDS be denied to the other person showing the income. Under such circumstances a liberal interpretation has to be given. The form prescribed under the rules cannot have an effect of interpretation of operations of the parent statute.

18. Here, there was practical difficulty also to comply with Rule 37BA(2), because Late Mr. Russi D. Bahadurji, passed away on 21/07/2018 and the executors of the estate applied for probate on 20/06/2019 which is still awaited from the Hon'ble Bombay High Court. In the Deed of settlement Late Mr. Russi D.

Bahadurji was the sole trustee and all the investments of the Deed of Settlement stood in a single name on that account. The executors of the estate have no right in the assets of the estate, till such time the will is probated. No company or mutual fund will entertain an executor till such time that the will is probated and therefore, for this reason the name of the deceased will continue on the Registry of the company or the mutual fund. Thus, in these peculiar facts and circumstances, it was an impossibility to comply with the condition provided in Rule 37BA (2).

19. There is another angle which needs to be seen is that the procedure prescribed by the Rule 37BA in certain circumstances becomes extremely cumbersome, because of each declaration by the mutual fund or the company, one has to lodge a particular form. It is impossible in the case of holding of several investments. Here it is a case, the present assessee which is in appeal before us has offered income on which TDS has been deducted and it is not able to receive the credit despite the PAN on which TDS has been deducted has not shown in the return of income and is clearly stated that no credit for TDS is being taken as the income belongs to the assessee and credit should be given there. Thus, in these circumstances, the strict conditions provided in Rule 37BA especially the forms prescribed under the Rules has to be read in the spirit of provision of Section 199(1) which in our opinion should prevail upon the forms and the conditions provided in the Rules. This proposition has been

settled in various judgments, for sake of reference few of them are being referred to, viz.,:-

- **CIT vs. Tulsyan NEC Ltd. (2011) (330 ITR 226) (SC)**

"13. Lastly, it is immaterial that the relevant form prescribed under Income-tax Rules, at the relevant time (i.e., before 1-4-2007), provided for set off of MAT credit balance against the amount of tax plus interest i.e., after the computation of interest under section 234B. This was directly contrary to a plain reading of section 115JAA(4). Further, a form prescribed under the rules can never have any effect on the interpretation or operation of the parent statute."

- **CIT vs. Hindustan Construction Co. Ltd. (1995) (211 ITR 535) (Bom)**

"In any event, the language of the statute cannot be overridden by a form prescribed under the Rules framed under the Act."

- **CIT vs. Apar Industries Ltd. (2010) (323 ITR 411) (Bom)**

"26. A form provided by a rule-making authority which is a delegate of the Legislature cannot override a statutory provision. Forms are subservient to legislation. Forms are intended to facilitate the implementation of legislation. Forms cannot supplant legislation."

20. It is also a equally well settled law that even if a delegated authority is empowered to provide for a Form then such Form has to be in accordance with provisions of the Act for the purpose of implementation provided under the Act and same cannot be extended the scope of such prescription and lay down any conditions or qualifications which are outside the realm of its powers. This proposition has been held by the following judgments:-

- **CIT vs. Nagpur Hotel Owners Association (1994) (209 ITR 441) (Bom)**

"The Supreme Court decisions referred to above are clear. They specifically speak of the rules and not the form. In principle also no distinction between the form and the rule can be drawn to judge the extent of delegation under section ii(2)(a) where the language does not permit delegation of power to prescribe limitation to give notice.

The conclusion is thus inevitable that the Income-tax Rules could not fix a time-limit for submitting the application in Form No. 10 under rule 17 and, therefore, the Tribunal was correct in its conclusion."

- **Sales Tax Officer vs. KI Abraham (1967 AIR SC1823)**

"The decision of the question at issue therefore depends on the construction of the phrase "in the prescribed manner" in s. 8(4) read with s. 13 of the Act. In our opinion, the phrase "in the prescribed manner" occurring in s. 8(4) of the Act only confers

power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in s. 8(4) does not take in the time-element. In other words, the section does not authorities the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dear...In Stroud's Judicial Dictionary it is said that the words "manner and form" refer only "to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it."

21. Though we have observed above that Rules and forms issued should not frustrate the main provisions of the Act, but we are not laying any proposition that the conditions of Rules are not to be adhered to, but when there such pressing circumstances and Revenue is aware that TDS credit is being claimed under right hands and original deductee is not claiming any TDS and has given declaration that it has neither shown the income nor it will claim in future, then there should be a mechanism to resolve the issues or Revenue should direct the deductor to comply with it. Accordingly, in the peculiar facts and circumstances of the case, we hold that assessee should be given credit of TDS amount of Rs.1,15,109/- u/s.199(1) and accordingly, the ground raised by the assessee is allowed.

22. In the result, appeal of the assessee is allowed.

Order pronounced on 27th April, 2023

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai; Dated 27/04/2023

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai