

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2009/Mum/2021
(A.Y: 2004-05)

Florence Distributors Pvt Ltd 5, Kitab Mahal, 192, Dr. DN Road, Form Mumbai – 400 001.	Vs.	The ACIT (OSD)-1(1)(3) Room No. 529, 5 th Floor, Aayakar Bhavan MK Road, Mumbai – 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACF7905J		
Appellant	..	Respondent

Appellant by :	Mr.Sunil Hirawat.AR
Respondent by :	Mr. S N Kabra. DR

Date of Hearing	31.05.2022
Date of Pronouncement	06.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 2, Mumbai order passed u/s 154 and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

1. *On the facts and in law, the Ld. CIT(A) had erred in not directing the AO to allow credit of Rs. 32,560/-*

2. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the ITAT to decide this appeal according to law.*

2.The brief facts of the case are that the assessee company is engaged in the business and filed the return of income 11.10.2004 disclosing a total income of Rs.1,11,795/- and claimed the refund of Rs. 3,454/- after considering set off of TDS of Rs. 32,560/- and advance tax paid of Rs. 11,000/-. Subsequently, the A.O. has passed the intimation u/s 143(1) of the Act with holding the TDS credit of Rs. 32,560/-. Against the intimation u/s 143(1) of the Act, the assessee has filed a rectification application u/s 154 of the Act. The sole disputed issue ventilated that the A.O. has not granted credit of TDS of Rs. 32,560/- as per intimation u/sec143(1) of the Act though the assessee has filed the original TDS

certificate issued by Union Bank of India. Whereas the A.O. in the rectification petition observed that the assessee has to file TDS certificate before 31.03.2007 whereas the original certificate was filed on 11.04.2018, therefore the credit of TDS cannot be allowed and the rectification petition was rejected. vide order dated 21.12.2018.

3. Aggrieved by the rectification order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, findings of the AO but finally concord with the facts that the claim is not valid and upheld the action of the A.O. in not granting TDS credit and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the AO in not granting the TDS credit, where the assessee has filed the TDS certificate in Form No.16A with the A.O and cannot be disputed. The Ld.AR substantiated the submissions with the explanations and supporting paper book and prayed for allowing the appeal. Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the sole contention of the Ld. AR that the A.O. has denied the claim of TDS credit of Rs.32,560/-on the interest on fixed deposits maintained by the assessee in the scheduled bank. The Ld.AR referred to the paper book at page 1 acknowledgment of return of income Form No. 1 for A.Y 2004-05 filed with the Income Tax Department where the TDS certificate was enclosed referred at

Sno No. 40(d) of the acknowledgement of the return of income filed. The Ld.AR emphasized that the interest on bank fixed deposits was offered to Tax and the assessee has disclosed the fixed deposits and TDS on interest in schedule-Current Assets,Loans&Advances in the balance sheet at page 4 of the paper book . The Ld.AR submitted that the assessee again submitted TDS Certificate Form No 16A issued by the Union Bank of India along with the indemnity Bond vide letter dated 16.08.2013.The Ld. AR demonstrated the copy of Form No 16A at page 9 of the paper book, cannot be disputed.

6. We find that the assessee has offered the interest income and made the claim of TDS credit in the return of income and TDS certificate was issued by the public sector bank. We are of the opinion that the

assessee should not suffer for the legitimate right of credit of TDS deducted by the public sector bank. The Ld. AR submissions are realistic and we find that the bank has deducted the TDS and has deposited with the government treasury and issued Form – 16A, which cannot be overruled.

7. Further in the rectification proceedings U/sec154 of the Act, it was mentioned that the assessee has given a indemnity bond in respect of the TDS claim. Considering the facts, circumstances and the period relate to A.Y 2004-05 and the assessee has claimed in the return of income and the A.O. cannot delay the grant of TDS credit on technicalities and the genuineness cannot be doubted. Accordingly, to meet the ends of justice, we direct the Assessing officer to

grant the TDS credit to the assessee and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 06.06.2022.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 06.06.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	31.05.22		PS
2.	Draft placed before author	02.06.22		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			