

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA Nos.924 to 926/Mum/2023
(A.Ys. 2017-18 to 2019-20)**

Wells Fargo Bank National Association, Unit No. B-501, Wing “B” 5 th Floor Supreme Business Park No. 27 in Village Powai Mumbai – 400 076	Vs.	Asst. Director of Income Tax, CPC, No.48/1 and 48/2, Prestige Alpha CPC, Electronic City, Bangalore - 560100
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCW2164P		
Appellant	..	Respondent

Appellant by :	P.J. Pardiwala & Niraj Sheth
Respondent by :	Anil Kumar Das

Date of Hearing	15.06.2023
Date of Pronouncement	21.06.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These three appeals filed by the assessee are directed against the different orders of CIT(A)-58, Mumbai, dated 31.01.2023 for assessment year 2017-18 to 2019-20. Since common issue on identical facts are involved in these appeals, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 925/Mum/2022 as a lead case and its finding will be applied mutatis mutandis to the other appeals.

ITA No. 925/Mum/2023

“Ground No. 1: General

The Commissioner of Income-tax (Appeals)-58 [the learned CIT(A)] erred on facts and in law in partly dismissing the appeal filed against intimation issued under section 143(1) of the Income- tax Act, 1961 (the Act) by the Centralized Processing Center, Bengaluru (CPC).

Ground No. 2: Short grant of credit for tax deducted at source (TDS)

The learned CIT(A) erred on facts and in law by confirming the short grant of TDS credit in the intimation issued by the CPC.

Ground No. 3: Levy of interest under section 234B and 234C of the Act

The learned CIT(A) erred on facts and in law by confirming the intimation issued by the CPC wherein interest under section 234B and 234C of the Act are calculated

The Appellant craves leave to add, to amend, alter, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.”

2. Fact in brief is that the original return of income for assessment for the year 2017-18 was filed on 28.11.2017 declaring total income at Rs.52,61,89,148/-. Subsequently, the assessee filed a revised return of income on 05.12.2018 declaring total income at Rs.56,04,05,067/-. The return of income was processed u/s 143(1) of the Act by the CPC, Bangalore vide order dated 14.06.2019 determining the total income of the assessee at Rs.56,04,05,070/-. Consequent to the processing of return of income u/s 143(1) a demand of Rs.79,10,396/- was raised as against the claim of refund of Rs.38,48,946/- made in the return of income filed by the assessee.

3. The assessee is a financial institution incorporated in USA and residential status of the assessee is non-resident. The further relevant facts are discussed while adjudicating ground of appeal of the assessee as follows.

4. Ground No. 1 is general which is not required any adjudication therefore, the same stand dismissed.

Ground No. 2: Short grant of credit for tax deducted at source:

5. The assessee is a tax resident of USA. During the year under consideration the assessee claimed TDS credit of Rs.5,98,89,443/- in the return of income filed by the assessee. Out of the said amount TDS of Rs.5,45,71,663/- was reflected in the Form 26AS of the assessee and the balance amount of Rs.53,17,780/- was not reflected in the Form 26AS of the assessee. The reason of TDS credit not reflected in the Form 26AS of the assessee was that the assessee had erroneously acquired the PAN (AAAFF6084H) under the status of the 'firm' and subsequently the assessee had acquired the PAN (AABCW2164P) in the status of a company. The assessee has included the whole income reflected under both the PAN in its return of income. However, the CPC while processing the return of income had not allowed credit of TDS reflected under PAN of firm.

6. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal for not granting the credit of TDS to the amount of Rs.53,17,780/- which was not appearing in the Form 26AS. The Id. CIT(A) has dismissed the appeal of the assessee holding that assessee had filed the return of income under the status of company PAN therefore, TDS credit pertaining to the firm PAN was not granted to the assessee without giving any other specific reasons relevant to the facts and circumstances placed by the assessee on the record.

7. During the course of appellate proceedings before us the Id. Counsel vehemently contended that assessee company by mistake acquired the PAN under the status of the firm, therefore, the Id. CIT(A) is not justified in dismissing the appeal of the assessee without any valid reason. The Id. Counsel has also referred provision of Sec. 199 of the Income Tax Act and Rule 37BA of the I.T. Rule. The Id. Counsel submitted that as per Rule 37BA credit for tax deducted at source is required to be given to the deductee on the basis of information relating to deduction of tax furnished by the deductor.

On the other hand, the ld. D.R supported the order of lower authorities.

8. Heard both the sides and perused the material on record. Without reiterating facts as elaborated above it is undisputed fact that assessee has disclosed the whole receipt in the return of income filed in the status of company including the credit amount of appearing under the status of the firm. In its submission the assessee has specifically explained before the ld. CIT(A) that the TDS credit pertaining to the receipt amount shown under the status of firm was not reflected in the Form 26AS because of inadvertently acquiring the PAN of the firm. The ld. CIT(A) has not given any specific finding on the submission filed by the assessee. We have also gone through the provision of Sec. 199 r.w.Rule 37BA of the I.T. Rule which state that credit for tax deducted at source and paid to the central government in accordance with the provision of chapter XVII shall be given to the person to whom payment has been made or credit has been given on the basis of information relating to deduction of tax furnished by the deductor to the income tax authorities or the person authorised by such authority. We have also perused the CBDT Instruction No. 5/2013 dated 08.07.2013 regarding giving credit for TDS in the case of TDS mismatch when a assessee approaches the assessing officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatch amount, said assessing officer will clarify whether or not the deductor has made payment of the TDS in the government account and if the payment has been made, credit of the same should be given to the assessee.

9. As per the software techniques if there is a mismatch in TDS credit as per ITR and 26AS the system will automatically generate the notice of demand for the tax liability. Because of such discrepancy, the assessee has gathered the documentary evidence as discussed above to prove that the TDS was deducted from the income offered for tax

purposes, however the same was not reflected in the Form 26AS because of inadvertently wrong PAN in the status of the 'Firm' was acquired by the assessee. Looking to the above facts and circumstances we consider that since the TDS was deducted from the income of the assessee, credit of the assessee cannot be denied due to technical/typographical error committed by the assessee. It is undisputed fact in the case of the assessee it has shown the whole receipt pertaining to its TDS claim in the return of income filed under the status of company and it had clarified with relevant evidences that mismatch in form 26AS was occurred by inadvertent acquiring the PAN under the status of firm and these facts were not contrary disproved by the authorities below. In view of the above we consider that once the assessee has paid the taxes in the form of TDS and included the receipt related to the TDS in its return of income then after verification of the submission made by the assessee the TDS credit should have been given. Therefore, we set aside the order of the ld. CIT(A) and direct the assessing officer to provide TDS credit to the assessee after verification of its claim that TDS amount could not be reflected in the Form 26AS in the capacity of a company because inadvertently the PAN no. of the firm was acquired by the assessee. Accordingly, this ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 3: Levy of interest u/s 234B & 234C:

10. Levy of interest u/s 234B & 234C is a consequential nature therefore, the same is not required any adjudication. Accordingly, this ground of appeal of the assessee stand dismissed.

11. The appeal of the assessee is partly allowed for statistical purposes.

ITA No. 924/Mum/2023

12. Since the facts and issue involved in this appeal are similar to the ITA No. 925/Mum/2023 which we have adjudicated supra therefore applying its finding as mutatis mutandis this appeal of the assessee is also partly allowed for statistical purposes.

ITA No.926/Mum/2023

13. Since the facts and issue involved in this appeal are similar to the ITA No. 925/Mum/2023 which we have adjudicated supra therefore applying its finding as mutatis mutandis this appeal of the assessee is also partly allowed for statistical purposes.

14. In the result, all the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 21.06.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Place: Mumbai

Date 21.06.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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.