

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

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 372/MUM/2023
(Assessment Year: 2018-19)**

Altico Capital India Limited,
Unit 11, Executive Centre India
Pvt. Ltd., Level 7, ParineeCrescenzo,
Plot 38/39, G Block, Bandra (East),
Mumbai - 400051
[PAN: AACCC3064F]

..... **Appellant**

National e-Assessment Centre,
Delhi

Vs
..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vijay Mehta
For the Respondent/Department : Ms. Snayogita Nagpal

Date : 18.07.2023
Conclusion of hearing : 27.07.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 13/12/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Appellant against the Assessment Order, dated 23/04/2021, passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The limited issue raised in present appeal requiring consideration pertains to the partial denial of the Appellant's claim of credit of tax

deducted at source and consequential levy of interest under Section 234A/B/C of the Act.

3. There was shortfall of grant of credit of Tax Deducted at Source (for short '**TDS Credit**') amounting to INR 12,72,32,249/- as per the Assessment Order, dated 24/04/2021, passed under Section 143(3) of the Act. Therefore, the Appellant preferred appeal before the CIT(A) which was dismissed by the CIT(A) vide its order, dated 13/12/2022. Now the Appellant is in appeal before the Tribunal against the aforesaid order of the CIT(A).
4. The Learned Authorised Representative for the Appellant took us the following summary of the claims of TDS Credit rejected by the Assessing Officer and the reasons thereof (place at page 10 of the paper-book):

Sr. No.	Reason for non-grant of TDS Credit	TDC Credit claimed	TDC Credit granted	TDS Credit not granted
1.	TDS Credit not granted due-to non-reflection in Form 26AS (now appearing in updated Form 26AS)	6,08,39,543	4,15,62,918	1,92,76,625
2.	TDS Credit appearing in Form 26AS but not granted due to a mismatch in the TAN/Name of the Deductor	2,77,39,128	3,37,500	2,74,01,627
3.	TDS pertaining to AY 2018-19 deposited by the Deductor in AY 2017-18 and duly reflected in Form 26AS of AY 2017-18 (not claimed in AY 2017-18)	4,24,10,302	4,17,10,302	7,00,000
4.	TDS pertaining to AY 2018-19 deposited by the Deductor in AY 2019-20 and duly reflected in Form 26AS of AY 2019-20 (not claimed in AY 2019-20)	1,33,14,117	1,17,72,000	15,42,117
5.	TDS deducted but not deposited by the Deductor	8,53,23,794	70,11,916	7,83,11,879

22,96,26,884 10,23,94,636 12,72,32,248

5. Explaining the reason for short grant of TDS Credit of INR 1,92,76,625/-, INR 7,00,000/- and INR 15,42,117/- reflected at Sr. No 1, 3 and 4 of the summary above, the Learned Authorized Representative for the Appellant submitted that since the Appellant has offered the income to tax during the Assessment Year 2018-19, the corresponding TDS Credit should also be granted in Assessment Year 2018-19 irrespective of the year in which the deductor has deducted and deposited the tax deducted at source. In relation to TDS credit of INR 2,74,01,627/- at Sr. No, 2 above, the Ld. Authorised Representative for the Appellant submitted that so long as the quantum of TDS Credit as claimed in the Return of Income is appearing in the Form 26AS, the Appellant should be granted credit notwithstanding the errors of TAN or name mismatch. As regards claim of TDS Credit of INR 7,83,11,879/- reflected at Sr. No 5 above, the Learned Authorised Representative for the Appellant submitted that the Appellant was entitled to claim credit in case the deductors have failed to deposit the tax into Government treasury and in this regard, the Learned Authorised Representative for the Appellant placed reliance on Section 205 of the Act, Office Memorandum, dated 11/03/2016 and the following judicial precedents – (a) Yashpal Saini v Rekha Hajarnavis and other [2007] 293 ITR 539 [Bom. HC]; (b) Pushkar Prabhat Chandra Jain v Union of India [2019] 262 Taxman 118 [Bom. HC]; (c) Anusuya Alva v DCIT [2005] 278 ITR 206 [Karnataka HC] Sanjay Sudan v ACIT [2023] 331 CTR 797 [Delhi HC]; and (d) Milan Arvindbhai Patel v ACIT [2023] 455 ITR 82 [Gujarat HC]. Alternatively, it was contended by the Learned Authorised Representative for the Appellant that if it is concluded that the deductor/payer has failed to deduct tax at source, then

income as accounted by the Appellant, to the extent of the amount presumed by the Appellant to be tax deducted at source, is not real income of the Appellant and therefore, the same cannot be taxed in the hands of the Appellant in the assessment year under consideration.

6. In response, the Learned Departmental Representative supported the order passed by the Assessing Officer and submitted that the assessment order was passed based upon the information/material available with the Assessing Officer at the time of framing the assessment. The Assessing Officer should therefore be granted opportunity to verify the claims made by the Appellant on the basis of fresh material including the updated Form 26AS.
7. We have considered the submission, perused the material on record and examined the position in law. Given the facts and circumstances of the present case, we are of the view that the claim of the Appellant for the balance TDS Credit (not granted by the Assessing Officer) requires examination/verification. Accordingly, we deem it appropriate to remand all the issues raised in the present appeal back to the file of the Assessing Officer with the following directions:
 - (a) As regards TDS Credit of INR 1,92,76,625/-, INR 7,00,000/- and INR 15,42,117/- reflected at Sr. No 1, 3 and 4 of the summary above, the Assessing Officer shall, subject to verification, grant credit of tax deducted at source corresponding to the income offered to tax by the Appellant for the Assessment Year 2018-19 to the extent the credit of tax deducted at source is reflected in Form 26AS of the Appellant for the AY 2018-19 or any other assessment year provided the Appellant is able to satisfy the Assessing Officer

that credit of such tax deducted at source has not been claimed any other assessment year. The TDS Credit shall not be denied to the Appellant merely on account of the fact that the deductor has recorded deduction or deposit of tax deducted at source in the books of accounts for a different assessment year.

- (b) As regards, contentions raised by the Appellant regarding, eligibility to claim TDS Credit pertaining to (i) non-matching of PAN data, name etc., or (ii) non-deduction of tax, or (iii) non-deposit of tax deducted at source is concerned, the Appellant would be at liberty to raise the same before the Assessing Officer. The primary onus to set up claim for credit for tax deducted at source shall be on the Appellant. The Appellant would file all the documents/details including the agreements, account statements, account confirmations etc. before the Assessing Officer to its support the claim for TDS Credit as well as the alternative claim pertaining to non-accrual of real income. The Assessing Officer shall consider the same as per law after carrying out necessary inquiry or verification. In order to verify TDS Credit denied on account of mismatch, the Assessing Officer shall also take into consideration Instruction No. 5/2013 [F. NO. 275/03/2013-IT(B)], Dated 08/07/2013. The Assessing Officer would be at liberty to ascertain the correct position about the TDS Credit with the relevant Assessing Officer (TDS). The Assessing Officer may also, if deemed necessary, issue a notice to the deductor to verify the claim of TDS Credit made by the Appellant.

8. Since we have remanded the issue related to the claim of TDS Credit to the file of the Assessing Officer, the issue of levy and computation

of interest of INR 12,37,213/-, INR 4,62,51,862/- and INR 26,37,980/- under Section 234A, 234B and 234C of the Act, respectively, being consequential, is also remanded back to the file of Assessing Officer.

9. In terms of the above paragraph 7 and 8 above, Ground No. 2 and 3 raised by the Appellant are allowed for statistical purposes, while the balance grounds raised by the Appellant are dismissed as being infructuous.
10. In result, the present appeal is allowed for statistical purposes.

Order pronounced on 27.07.2023.

Sd/-
(B.R. Baskarn)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.07.2023
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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