

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.494/PUN/2023
Assessment Year : 2003-04

Shobha Ramkisan Dargad, 7, Mahavir Market, Phaltan Galli, West Mangalwar Peth, Solapur – 413002 PAN : AASPD8914C	Vs.	ITO, Ward-1(1), Solapur
Appellant		Respondent

Assessee by: None (Written submissions)
Revenue by: Shri M.G. Jasnani

Date of hearing 17-08-2023
Date of pronouncement 21-08-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dt. 09-03-2023 passed by the CIT(A) in National Faceless Appeal Centre u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2003-04.

2. The only issue raised in this appeal is against not allowing the credit of TDS on rent. Succinctly, the facts of the case are that the assessee filed her return u/s.139(4) on 31-03-2004 declaring total income at Rs.1,23,344/-. Such income included net income of Rs.76,079/- from Larsen & Toubro Ltd. (L&T) under the head

'Income from house property', which was after the claim of standard deduction @ 30%. L&T deducted tax at source of Rs.20,268/- from the rent paid to the assessee to the tune of Rs.1,29,000/-. In the absence of any TDS certificate made available by the deductor before the filing of return, the benefit of TDS was not claimed. On receiving such certificates, the assessee revised the return u/s.139(5) on 02-02-2005 showing 'Income from house property' enhanced at Rs.1,29,000/- with TDS of Rs.20,268/-. Side by side, an application u/s.155(14) was also filed on 31-01-2005 enclosing therewith original 12 TDS certificates issued by the L&T towards rent paid by them to the assessee. The revised return was not processed. The rectification application was also not disposed of for more than 14 years. It was on 28-05-2019 that the order of rectification was passed rejecting the assessee's claim for the benefit of TDS. The ld. CIT(A) upheld the action of the AO. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee. However, the written submissions filed by her, whose correctness has not been assailed by the ld. DR, have been taken into consideration. It is seen that the assessee in her original return filed u/s.139(4) declared gross income under the head 'Income from

house property' at Rs.1,08,684/- and net income, after standard deduction, at Rs.76,079/-. The benefit of TDS was not claimed because the TDS certificates were not provided to the assessee at the material time. Subsequently, on receipt of such certificates, she filed revised return u/s.139(5) on 02-02-2005 claiming benefit of TDS and also a rectification application.

4. Prior to substitution of sub-section (5) of section 139 by the Finance Act, 2016 w.e.f. 01-04-2017, the mandate to file revised return was only *qua* the return filed originally u/s.139(1). Amendment has done away with this restricted mandate of revising only the original return and not the belated return u/s.139(4) w.e.f. 01-04-2017. Going with the provision, as was applicable to the assessment year 2003-04 under consideration, it is ostensible that the revised return filed by the assessee was rightly not taken into consideration because the original return was not filed u/s.139(1) but u/s.139(4). Once, the belated return was not eligible for revision, it was rightfully ignored by the AO.

5. If the revised return is pushed away from consideration, what remains is that the assessee filed the return u/s.139(4) showing, *inter alia*, 'Income from house property' but without claiming credit for TDS in the absence of the necessary certificates issued by the L&T. She moved a rectification application u/s.155(14) on

31-01-2005 along with 12 TDS certificates issued by L&T towards rent paid to the assessee. This rectification application remained pending with the department for more than 14 years. It was only on 28-05-2019 that the order was passed rejecting the assessee's rectification filed on 02-02-2005.

6. In order to evaluate the claim of the assessee, it is essential to examine the prescription of section 155(14), which provides that where in the assessment for any previous year or in an intimation u/s.143(1) of the Act, credit for TDS etc. has not been given on the ground that the certificate furnished u/s.203 was not filed with the return and subsequently the certificate is produced before the AO along with rectification application within two years from the end of the relevant assessment year, the AO shall amend the order of assessment or the intimation u/s.143(1). The proviso to this sub-section provides that: "Nothing contained in this sub-section shall apply unless the income from which the tax has been deducted has been disclosed in the return of income filed by the assessee for the relevant assessment year". On an overview of this provision, to the extent as it is relevant for our purpose, it clearly transpires that the rectification application has to be accepted u/s.155(14), where the assessee originally filed return without claiming or being allowed the benefit for want of TDS certificates

but disclosing the income subjected to deduction of tax at source and thereafter within two years from the end of the relevant assessment year files rectification application producing the TDS certificates.

7. Adverting to the facts of the extant case, it is seen that the assessee filed rectification application within one year from the end of the relevant assessment year. This condition is, ergo, satisfied. However, it is pertinent to note that though the assessee received gross rent of Rs.1,29,000/- from L&T on which TDS of Rs.20,268/- was made, but offered rental income in the return u/s.139(4) only to the tune of Rs.1,08,684/- at gross level. Resultantly, the benefit of TDS, in the rectification proceedings u/s 155(14) can be allowed only to the extent of income originally offered by the assessee on gross basis in the return u/s.139(4), which is to the tune of Rs.1,08,684/- and not the total amount of rent received by the assessee at Rs.1,29,000/- on which deduction of tax at source was made of Rs.20,268/-. We, therefore, set-aside the impugned order and direct the AO to grant proportionate credit of TDS in respect of rental income of Rs.1,08,684/- as shown by the assessee in her return filed u/s.139(4). Needless to say, the assessee will be allowed reasonable opportunity of hearing.

8. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 21st August, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 21st August, 2023
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	17-08-2023	Sr.PS
2.	Draft placed before author	17-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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