

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 468/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2017-18

**Shri A. Ramasamy,**  
21/10, Gopal Reddy Colony,  
East Main Road, Peravallur,  
Chennai – 600 082.

**The Income Tax Officer,**  
Vs. Non-Corporate Circle 10(1),  
Chennai.

**PAN: ADIPR 8218A**  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Yasar Arafath, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 20.09.2023  
घोषणा की तारीख/Date of Pronouncement : 27.09.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2022-23/1050054976(1) dated 23.02.2023. The return of income was processed and intimation u/s.143(1) of the Income Tax Act, 1961

(hereinafter the 'Act') was issued by the DCIT, CPC, Bengaluru for the assessment year 2017-18 vide order dated 25.09.2019.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO/CPC, Bengaluru not allowing credit for TDS of Rs.1,44,775/-.

3. Brief facts are that the assessee is an individual filed his return of income on 26.07.2017 declaring total income at Rs.11,52,780/- and claimed refund of Rs.96,380/-. The CPC, Bangalore processed the return of income u/s.143(1) of the Act and determined the total income at Rs.17,29,430/- thereby raised the demand of Rs.1,31,175/-. In response to this intimation received u/s.143(1) of the Act, the assessee filed rectification application u/s.154 of the Act. The rectification application was rejected and same total income was assessed at Rs.17,29,430/- and raised tax demand of Rs.1,31,175/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) dismissed the appeal of assessee by discussing the facts and legal position as under:-

*5.2.1. In this case, the appellant was a co-owner of the theatre along with two other partners. The theatre was rented out to M/s Qube Cinemas during the year under consideration and the rent was received after deducting taX*

*at source by the deductor (M/s Qube Cinemas in this case). This TDS should have been credited to all the three Co-owners namely Mr.Palanisamy, Mr. Ramesh Babu and the appellant. But the deductor credited the TDS only to the appellant in order to make his work easy. During the appellate proceedings, the appellant contended that the rental income was received equally by all the partners and was shown in their respective return of income for the year under consideration. In support of this, the appellant filed the copy of returns and Form 26AS of the other two co-owners of the theatre. After perusal of Form 26AS of the appellant, it is noted that receipts from M/s Qube Cinemas u/s 194C of the Act amounts to Rs.6,97,442/- and tax was deducted at source at Rs.1,44,775/-. However on verification of Form 26AS of the other two partners, it was noted that there was no receipt and TDS credit to the other partners from M/s Qube Cinemas. Rule 37BA of Income Tax Rules clearly states that credit of TDS has to be given to the person whom payment has been made by the deductor. Rule 37BA is reproduced here as under:-*

Credit for tax deducted at source for the purposes of section 199.

37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVI, 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 deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

*5.2.2. From plain reading of Rule 37BA, it is crystal clear that the person to whom TDS credit (as per Form 26AS) is available has to show the receipts against TDS credit as his own income in the return field. In this case, the appellant claims that all the receipts reflecting in his Form 26AS was not his income but the income of three partners. The appellant also claims that the other two partners have shown these receipts in their return of income. But if the receipts were the income of three partners, the appellant should have got his Form 26AS revised by revising TDS return of the deductor. Instead of doing so the appellant filed the appeal against the order u/s 143(1) passed by the AO. In view of the facts narrated above and explicit provisions of Rule 37BA, I uphold the addition made by the AO on the basis of receipts reflecting in Form 26AS of the appellant. Accordingly, Ground No. 3 is dismissed.*

Aggrieved, now assessee is in appeal before us.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee is one of the co-owner of the theatre along with two other co-owners. The theatre was rented out to M/s. Cube Cinemas and received an amount of Rs.6,97,452/-. The assessee claimed that the theatre is in co-ownership and hence, they have divided this rent among three hands and for this, the assessee filed one copy of profit & loss account of M/s. A. Ramasamy & 2 others, Proprietor of M/s. Shanmuga Theatre, G.N.T. Road, Moolakkadai, Chennai, wherein income from Real Image as per Form 26AS is declared at Rs.6,97,442/-. The assessee also produced before us copies of return of Shri A. Ramesh Babu and Shri Ayyadurai Nadar Palanisamy but from which, computation of total income, we noted that these persons have declared only 1/3<sup>rd</sup> share, each Rs.1,07,777/-. We could not understand when the total rent is Rs.6,97,442/-, how these parties could declare at Rs.1,07,777/-. But this is a matter of verification. In case these are three co-owners, first of all the tenant or occupier of the theatre should deduct tax in equal hands but in any case, if there are three co-owners, all the three co-owners have declared rent in equal portion in their returns of income, the AO will verify and will accordingly, allow the credit of TDS in the hands of the assessee. In case, these persons have not declared the income,

the AO will not allow any credit of TDS and will assess the entire income in the hands of the assessee. In term of the above, we set aside this appeal to the file of the AO and allow for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> September, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> September, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant  | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF.        |                     |