

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मवती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आसं. 1840/मुं/2023 (नि. व. 2019-20)
ITA NO.1840/MUM/2023 (A.Y.2019-20)

Homi Farrok Kaka,
Avabai Mansion, 15, Henry Road,
Colaba, Mumbai – 400 001.

PAN: AAGPK-9646-N

..... अपीलार्थी/Appellant

बनाम Vs.

Commissioner of Income Tax (Appeals), NFAC,
Delhi.

..... प्रतिवादी/Respondent

Assessee by : S/Shri Porus Kaka, &
Manish Kanth
Revenue by : Shri Prakash Kishinchandani

सुनवाई की तिथि/ Date of hearing : 10/08/2023
घोषणा की तिथि/ Date of pronouncement : 27/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 27/03/2023 , for Assessment Year 2019-20.

2. The assessee in appeal has assailed the findings of CIT(A) in not allowing the credit of tax deducted at source in the name of AOP to the assessee (individual).

3. Shri Porus Kaka appearing on behalf of the assessee submitted that while filing return of income assessee had claimed TDS credited to the PAN of M/s. Homi S.Kaka& Others (AOP). The Id.Counsel for the assessee submitted that the AOP M/s. Homi S. Kaka was dissolved in March, 2019. The income of AOP relevant to Assessment Year 2019-20 was reflected by the assessee in his return of income. The assessee wanted to claim TDS deducted in the name of AOP in his individual account. After the dissolution of AOP the assessee tried his level best to inform about dissolution of AOP to the jurisdictional Assessing Officer . The Department refused to accept the letter on the ground that since, proceedings have become online/faceless, no physical letter/request can be accepted. The assessee tried to upload the letter on official portal of the Department but there was no way the assessee could uploaded this information to reach the Assessing Officer.

3.1 The Id.Counsel for the assessee submitted that since, the assessee had offered income of AOP in his return of income filed in individual capacity, the assessee was eligible to claim benefit of TDS deducted in the name of AOP. In support of his submissions he placed reliance on the decision in the case of Anil RatanlalBohora vs. ACIT, 148 taxmann.com 15 (Pune-Trib).

4. On the other hand, Shri Prakash Kishinchandani representing the Department strongly supported the impugned order and prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by rival sides and have examined orders of authorities below.

6. The short issue in appeal is whether the assessee (individual) can claim the credit of TDS deducted in the name of erstwhile AOP, where the assessee has reflected the income of AOP in his return of income.

7. The assessee purportedly reflected the income of AOP M/s. Homi S.Kaka & Others with PAN AAFFH-4950-Q in his return of income filed in the capacity of an individual. The assessee was one of the constituents of AOP. The said AOP was ostensibly dissolved in March, 2019. The contention of the assessee is that the assessee despite his all endeavors was unable to convey to the Assessing Officer regarding the fact of dissolution of AOP and assessee claiming the benefit of TDS deducted in the name of AOP.

8. The provisions of section 199(1) of the Act provides for credit for tax deducted at source. Sub-section(3) of section 199 of the Act makes provision for framing rules for the purpose of giving credit in respect of tax deducted at source and/or tax paid in accordance with the provisions of Chapter –XVII. Rule 37BA of Income Tax Rules, 1962 was formulated to give effect to the provisions of section 199 of the Act. Here it would be relevant to refer to the provisions of Rule 37BA(2), the same are reproduced here in below:

“37BA(2) [(i) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee :

***Provided** that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).]*

(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.”

A perusal of sub-rule (2)(i) makes it clear that where the tax has been deducted at source and the same is assessable in the hands of a person other than the deductee, credit for such TDS shall be given to the other person. Thus, the rule makes a provision for giving credit of TDS in part or in full as the case may be to the person other than deductee. The clause (ii) and (iii) to sub-rule (2) lays down the procedure for allowing such credit of TDS to the person other than deductee. Here it is relevant to mention that the substantive provision for giving credit of TDS to person other than deductee is contained in Rule-37BA(2)(i) r.w.s. 199 of the Act, whereas, the procedure is set out in Rule 37BA(2)(ii) & (iii). Any short comings in compliance of the procedure cannot be an impediment to give effect to the substantive provisions. Our this view find support from the decision of Co-ordinate Bench in the case of Anil Ratanlal Bohora (supra). The relevant extract of the same is reproduced herein below:

“6. A careful perusal of sub-rule (2) indicates that where the income, on which tax has been deducted at source, is assessable in the hands of a person other than deductee, then credit for the proportionate tax deducted at source shall be given to such other person and not the deductee. The proviso to sub-rule (2) provides for deductee filing a declaration with the deductor giving particulars of the other person to whom credit is to be given. On receipt of such declaration, the deductor shall issue certificate for the deduction of tax at source in the name of such other person. The crux of section 199 read with rule 37BA(2) is that if the income, on which tax has been deducted at source, is chargeable to tax in the hands of the recipient, then credit for such tax will be allowed to such recipient. If, however, the income is fully or partly chargeable to tax in the hands of some other person because of the operation of any provision, like section 64 in the extant case, the proportionate credit for tax deducted at source should be allowed to such other person who is chargeable to tax in respect of such income, notwithstanding the fact that he is not the recipient of income, It is with a view to regularize the allowing of credit for tax deducted at source to the person other than recipient of income, that the proviso to rule 37BA(2)

has been enshrined necessitating the furnishing of particulars of such other person by the recipient for enabling the deductor to issue TDS certificate in the name of the other person. The proviso to rule 37BA(2) is just a procedural aspect of giving effect to the mandate of section 199 for allowing credit to the other person in whose hands the income is chargeable to tax. The entire purpose of this exercise of allowing credit to the other person is to ensure that the benefit of tax deducted at source is availed once and that too, by the right person, who is chargeable to tax in respect of such income. It is just to streamline the procedure for giving effect to this intent and rule out the possibility of taking any inappropriate credit for the amount of tax deducted at source, firstly, by the recipient who is not chargeable to tax and secondly, by the person who is rightly chargeable to tax in respect of such income, that the procedural provision has been put in place in rule 37BA(2). One needs to draw a line of distinction between substantive provision [section 199 read with rule 37BA(2) without proviso] and the procedural provision [proviso to rule 37BA(2)]. Non-compliance of a procedural provision, which is otherwise directory in nature, cannot disturb the writ of a substantive provision.”

In the light of the provisions of section 199 r.w.r 37BA(2), in the instant case we have no hesitation in holding that where the deductee has not filed return of income offering the income to tax and consequently has not claimed the benefit of TDS, the other person who has offered the said income (i.e. the income of the deductee) in his return of income, he would be eligible for claiming the credit of TDS deducted in the name of deductee.

9. Thus, in the facts of the case, we deem it appropriate to restore the issue back to the file of Assessing Officer with a direction to examine whether the assessee has declared income of erstwhile AOP in his return of income. If the answer to above question is in affirmative, the benefit of TDS deducted in the name of AOP be allowed to the assessee. The Assessing Officer before deciding this issue shall afford reasonable opportunity of hearing/making submissions to the assessee, in accordance with law.

10. In the result, appeal of the assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Wednesday the 27th day of September, 2023.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/ Mumbai, दिनांक/Dated 27/09/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,
Mumbai