

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 278/DEL/2024 [A.Y 2022-23]

Shri Rajesh Kumar
House No. 1874, Gandhi Chowk
Ellenabad, Haryana
Uttar Pradesh

Vs.

The D.D.I.T
Benguluru

PAN: BSMPK 4763 R
(Applicant)

(Respondent)

Assessee By : Shri Raj Kumar Garg, CA
Department By : Shri Om Prakash, Sr. DR

Date of Hearing : 27.03.2024
Date of Pronouncement : 27.03.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the Id.
CIT(A) - 8, Mumbai dated 15.12.2023 pertaining to A.Y 2022-23.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in not allowing credit of TDS deducted at source by the purchaser ignoring the fact that the assessee is only a Kachha Arthia and, therefore, not liable to pay tax on the alleged income.

3. Briefly stated, the facts of the case are that the assessee being a Kachha Arthia, filed its return of income for commission earned by it. The total turnover of commission shown by the assessee was Rs. 15,78,693/-. However, taking a leaf out of Form No. 26AS, proportionate credit of TDS was allowed to the assessee.

4. When the matter was agitated before the ld. CIT(A), the ld. CIT(A) held as under:

received the commission.

5.8 As per the provisions of Section 199 of the Act and Rule 37BA(2) of the Rules, both income and TDS are to be considered in the hands of the same person. It is an admitted fact that the TDS made by the purchaser are not his sales but that of the agriculturist/farmer. Hence, the TDS had been made wrongly in the PAN of the appellant and the credit thereof ought not to have been claimed by the appellant in the return. Instead, as provided u/s 199 and Rule 37BA(2) of the Act, the appellant ought to have filed the declaration with the deductor that the sales are not his sales and he is merely a commission agent facilitating the sale and purchase transactions. The appellant ought to have got the TDS certificates issued in the name of the clients on whose behalf he claims to have acted as an agent, or in the alternative, ought to have got appropriate corrections carried out in the TDS statements filed by the deductor, by filing with the deductor the necessary declarations requesting that TDS be issued in the name of clients. Despite the deficiency letter issued by the AO, GPC, no such action has been carried out by the appellant and the TDS continues to appear in his own PAN without offering the corresponding income.

5. The ld. counsel for the assessee vehemently stated that being a Kachha Arthia, the assessee is not liable. Strong reliance was placed on CBDT Circular No. 452 dated 17.03.1986.

6. Per contra, the ld. DR supported the findings of the ld. CIT(A).

7. I have carefully considered the orders of the authorities below. There is no dispute that the assessee is a Kachha Arthia and CBDT Circular No. 452 squarely applies. However, I am of the considered opinion that the assessee should not get benefit of tax erroneously deducted by the payer in as much as the assessee has not shown the same as its income.

In my considered opinion, the findings of the ld. CIT(A) mentioned elsewhere do not call for any interference.

8. In the result, the appeal of the assessee in ITA No. 278/DEL/2024 is dismissed.

The order is pronounced in the open court on 27.03.2024

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 27th March, 2024

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	