

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
ITA No.3888/Mum/2023
(A.Y. 2021-22)

Anurag Dikshit, C/o Ernst and Young LLP 14 th Floor, The Ruby, Dadar West, Maharashtra 400028	Vs.	The Income Tax officer (IT)2(1)(1), Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AEEPD3232M		
Appellant	..	Respondent

Appellant by :	Nikhil Tiwari & Bhumik Vasa
Respondent by :	Manoj Kumar Sinha

Date of Hearing	05.03.2024
Date of Pronouncement	15.03.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-56, dated 21.09.2023 for A.Y. 2021-22. The assessee has raised the following grounds before us:

- “1. The learned CIT(A), on the facts and circumstances of the case and in law, erred in not assessing the correct income of the Appellant by holding that the learned AO had no power to reduce the income offered by the Appellant.
2. The learned CIT(A), on the facts and circumstances of the case and in law, erred in not reducing the corresponding rent income of INR 32,54,155 from the returned income of AY: 2021-22, while disallowing the corresponding TDS credit of INR 13,77,757 claimed in the return of income.

The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law.”

2. Fact in brief is that the assessee filed its return of income on 29.10.2021 for the year under consideration and shown total income of Rs.6,08,11,380/-. During the year under consideration the assessee offered rent income amounting to Rs.7,56,59,095/- and claimed TDS credit of Rs.3,20,32,848/- as reflected in the Form 26AS dated 18.10.2021 at the time of filing return of income. Subsequently, the assessee has downloaded another Form 26AS on 14.08.2023 from e-filing web portal of the Income Tax Department and noticed that rental income was reflected at Rs.7,24,04,940/- as against the rental income of Rs.7,56,59,095/- reflected in the 26AS form dated 18.10.2021. The aforesaid rental income was reduced from Rs.7,56,59,095/- to Rs.7,24,04,940/- because the TCS to which the assessee had let out his premises on rent had revised its withholding tax return since the premises was occupied till 15.03.2021 because of termination of the lease of the premises. The CPC has carried out the rectification u/s 154 of the Act and only after receiving the rectification order u/s 154 of the Act the assessee came to know that TCS had filed its revised withholding tax return because the property was given for rent only for 11 and half month. Therefore, there was difference of Rs.3,25,14,155/- of rent reported in the return of income filed by the assessee on the basis of 26AS from dated 18.10.2021. The TCS had also reduced the TDS pertaining to rent payment to the amount of Rs.13,77,757/- and the same was reflected in the new Form 26AS dated 18.10.2021. Accordingly, the CPC passed order u/s 154 of the Act and disallowed the claim of TDS credit amounting to Rs.13,77,757/- claimed by the assessee, however, the CPC has not reduced the corresponding rental income from Rs.7,56,59,095/- to Rs.7,24,04,940/- as reported in the 26AS form downloaded on 14.08.2023.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that AO has no power to reduce the income offered by the assessee.

4. During the course of appellate proceedings before us, the ld. Counsel vehemently submitted that CPC vide order passed u/s 154 of the Act has disallowed the claim of TDS of Rs.13,77,757/- on the rent which was not paid by the TCS since the premises was given on rent to TCS actually for 11 and half month and not for 12 months during the year under consideration. However, simultaneously the CPC had not reduced the corresponding actual income from rent to Rs.7,24,04,940/- from Rs.7,56,59,095/- as reflected in the 26AS form downloaded on 14.08.2023. The ld. Counsel also submitted that since new form 26AS has been brought on record after the due date of filing return of income which was 31.12.2021, therefore, the assessee cannot file any revised return and the CPC should have made changes at both level in respect of reduced rental income along with reduced TDS amount. The ld. Counsel also referred page no. 1 of the paper book relating to computation of income and page no. 53 to 56 showing processing of return of income by the CPC and also referred copy of rectification application made by the assessee and copy of order CPC u/s 154 of the Act placed at page no. 73 of the paper book. He also referred page no. 86 of the paper book showing mismatch of TDS and also referred copy of rent agreement between the assessee and TCS placed at page no. 101 of the paper book.

On the other hand, ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. During the year under consideration the assessee has offered rental income of Rs.7,56,59,095/- from the premises given on rent to TCS and claimed

corresponding TDS credit of Rs.3,20,32,848/- as reflected in Form 26AS at the time of filing return of income. However, the assessee has downloaded another 26AS form on 14.08.2023 and found that such rental income received by the assessee from the TCS was reflected at Rs.7,24,04,940/- and TDS credit was reduced to Rs.3,20,32,848/- from Rs.3,20,32,848/-. Since the TCS had revised its withholding tax return to reflect income and TDS till 15th March 2021 as TCS had occupied the property only till 15th March 2021 therefore, the CPC has made rectification order u/s 154 of the Act and withdrawn the excess TDS credit given to the assessee, however, CPC has not reduced the rental income received by the assessee to Rs.7,24,04,940/- from Rs.7,56,59,095/- as reflected in the new 26AS form downloaded on 14.08.2023. The assessee has filed appeal before the ld. CIT(A) that CPC has not simultaneously reduced the rental income as a result, excess rent income of Rs.32,54,155/- being the difference of rent income of Rs.7,56,59,095/- (-) Rs.7,24,04,940/- was shown in the order passed by the CPC. The assessee has explained before the ld. CIT(A) that no revised return can be filed since the new 26AS form was brought on record after due date of filing the return of income which was 31.12.2021. In this regard, the ld. Counsel has also referred the copies of rent agreement executed between the assessee and the TCS showing that the lease period for the property given on rent for the year under consideration was 11 and half months. The CPC has carried out the rectification u/s 154 of the Act and withdrawn the excess credit of TDS granted to the assessee, however, simultaneously the excess rent charged from the assessee as discussed supra has not been reduced. Looking to the above facts and circumstances we find merit in the claim of the assessee that if the excess claim of TDS was withdrawn simultaneously the CPC should have also reduced the rent income actually received by the assessee from Rs.75,65,90,952/- to

Rs.7,24,04,940/-. Therefore, we direct the assessing officer to reduce the corresponding excess rental income of Rs.32,54,155/- because premises was occupied for 11½ months during the year under consideration as discussed in this order therefore grounds of appeal of the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.03.2024

Sd/-

Sd/-

(Kavitha Rajagopal)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 15.03.2024

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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