

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORESHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.670/Del/2023, A.Y.2012-13)

Suja International Amar colony, Lajpat Nagar-IV, New Delhi PAN : ABYFS7770A	Vs.	DCIT, Circle 54(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Prashant Khandelwal, Adv.
Respondent by	Sh. Anuj Garg, Sr. DR

Date of Hearing	22/04/2024
Date of Pronouncement	26/04/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal preferred by the Assessee is against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In Short 'the CIT(A)'] on 16.01.2023.

2. The assessee has raised six grounds of appeal which revolve around sole and substantive issue of non-allowance of the credit of Tax Deducted at Source [In short 'TDS'] of Rs. 9,54,132/- in the relevant assessment year irrespective of the fact that the consequential income thereof at Rs. 94,41,321/- had been assessed in the relevant assessment year.

3. The relevant facts, in brief, are that the Assessee, a partnership firm, came into existence on 01.04.2011. The Assessee filed its return of income for the relevant assessment year [In short 'the A.Y.] declaring income of Rs.2,59,34,740/-. In the return of income, the appellant-assessee claimed refund of Rs.9,24,470/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 [In short 'the Act']. In the processing of the ITR u/s 143(1) of the Act, the Assessing Officer [In short 'the AO'] did not allow the credit of TDS of Rs.9,54,132/-.Therefore, the appellant assessee filed the rectification application on 3rd April, 2018 stating that the income of Rs.95,41,321/- corresponding to the TDS of Rs.9,54,132/- had been assessed in the relevant AY; therefore, the consequential credit of the TDS has to be given u/s 143(1) of the

Act. The AO rejected the application of the appellant-assessee filed u/s 154 of the Act on the reasoning that the TDS of Rs.9,54,132/- claimed by the appellant-assessee did not get reflected in its 26AS; therefore, the credit of the said TDS amount cannot be allowed in the relevant year. Aggrieved, the appellant-assessee filed the appeal before the CIT(A) who dismissed the appeal. Hence, this appeal is before us.

4. The Ld. AR submitted that the deductor “Bosch Rexroth BV” who deducted tax of Rs.9,54,132/- u/s 194J of the Act for the AY 2012-13 had wrongly shown the said TDS amount in the AY 2011-12 its TDS statement. Therefore, the TDS of Rs.9,54,132/- is not getting reflected in the 26AS of the appellant in the relevant year; i.e. the AY 2012-13. In support of the claim, the Ld. AR filed details of the ledger of the bank account where the aforementioned receipts corresponding to the TDS of Rs.9,54,132/- did get credited/reflected. The Ld. AR further submitted that the appellant-assessee is not getting its TDS credit due to the wrong submission of TDS statement by the deductor, “Bosch Rexroth BV” though the consequential income of Rs.95,41,321/- had been assessed in the

relevant AY. It was further submitted that the appellant-assessee's case for the AY 2011-12 was reopened based on the TDS statement filed by the deductor, "Bosch Rexroth BV". However, the same was dropped after submission of the detailed reply, as mentioned above, by the appellant-assessee. The Ld. AR also submitted that the appellant-assessee, in view of the above facts, had requested the deductor "Bosch Rexroth BV", a foreign company, to revise its TDS statement but in vain.

5. The Ld. DR submitted that the credit of TDS as mentioned above cannot be given as the same is not getting reflected in the appellant-assessee's 26AS. The best recourse, according to the Ld. DR, is that the appellant-assessee should request the deductor "Bosch Rexroth BV" to revise the TDS statement in this regard.

6. We have heard both the parties at length and perused the record. We find that there is a genuine hardship to the appellant-assessee in not getting the credit of the TDS of Rs.9,54,132/- particularly when the appellant-assessee cannot file the return of income for the AY 2011-12 claiming the credit of TDS of Rs.9,54,132/- because the assessee was not in existence in the AY

2011-12. Technically, the AO is not able to give credit of the TDS of Rs.9,54,132/- in the AY 2012-13 as the same is not getting reflected in the assessee's 26AS. Theoretically, the AO appears justified in not allowing credit of TDS of Rs.9,54,132/- in AY2012-13 but a way out has to be worked out by the AO to address the genuine hardship of the appellant-assessee and allow credit of TDS of Rs.9,54,132/- in the AY 2012-13 after verifying the facts of the case and by resorting to the provision of Section 119 of the Act if the appellant-assessee files application u/s Section 119(2)(b) of the Act to get address its grievance as per the law.

7. In view of the above, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 26th April, 2024

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:26/04/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ITA No.670/Del/2023

ASSISTANT REGISTRAR
ITAT, NEW DELHI