

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE**  
**SHRI LALIET KUMAR, JUDICIAL MEMBER**  
**&**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं/ITA No.668/Hyd/2023  
(निर्धारण वर्ष/Assessment Year: 2020-21)

Krishna Hari Gaddam, Vs. Income Tax Officer,  
Hyderabad Ward-12(1),  
[PAN No. ADEPG7798Q] Hyderabad  
अपीलार्थी/Appellant प्रत्यर्थी/Respondent

निर्धारित द्वारा/Assessee by: Shri H. Srinivasulu, AR  
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 29/04/2024  
घोषणा की तारीख/Pronouncement on: 30/04/2024

**आदेश / ORDER**

**PER MADHUSUDAN SAWDIA, A.M:**

The captioned appeal filed by the assessee is directed against the order dated 02/11/2023 passed by the Addl/JCIT(A)-5, Chennai, ("Ld. CIT(A)") relating to the assessment year (AY) 2020-21.

2. Brief facts of the case are that the assessee was a salaried employee of Karvy Stock Broking Limited. For the year under consideration, the assessee filed his return of income, declaring a total income of Rs. 86,10,680/- and paid

total income tax of Rs. 27,37,674/-, consisting of Tax Deducted at Source (“TDS”) of Rs. 15,11,384/- and self assessment tax of Rs.12,26,290/-. The CPC Bengluru (“CPC”) in the intimation u/s 143(1) of the income tax Act, 1961 (“the Act”), dt. 08/05/2021 did not give credit of Rs. 13,50,000/- out of total TDS of Rs. 14,75,000/- deducted by M/s. Karvy Stock Broking Limited u/s. 192 of the Act, contending that Form 26AS does contains the details of TDS of Rs. 13,50,000/- and finally raised a demand of Rs.14,17,500/-.

3. Aggrieved, assessee preferred appeal before the First Appellate Authority.

4. Learned First Appellate Authority considering the facts of the case, dismissed the appeal of assessee, but simultaneously gave a direction to the jurisdictional AO to treat the assessee as not in default of taxes for the entire sum covered under TDS non-remittance, in accordance with the CBDT instruction No. 05/2013 dated 08/07/2013 and CBDT Press release dated 11/03/2016.

5. Aggrieved by the said order of the first appellate authority, assessee is in appeal before the Tribunal.

6. At the time of hearing, learned AR submitted that the entire tax demand of Rs.14,17,501/- has arisen due to the fact that the employer of the assessee i.e. M/s Karvy Stock Broking Limited has not deposited TDS of Rs. 13,50,000/-, deducted from the salary paid to the assessee and in the absence of TDS getting reflected in form 26AS, the CPC erred

in not granting TDS credit, while there is no fault on the-part of the assessee. It was submitted that the Ld. CIT(A) erred in holding that the action on the part of the CPC cannot be faulted at, since it is system driven and unless and until the credit of TDS appears in form 26AS, that corresponds to the PAN of the assessee, extending credit in peculiar circumstances, as that of the case of the assessee is rather impossible. He contended that as the TDS on salary was deducted from salaries paid to the assessee, as per Income tax Law, credit for the same to be granted by CPC and prayed that substantial benefit granted as per the law cannot be taken away by the technology and hence credit of TDS deducted by the employer should be granted to the assessee.

6.1. It was further pleaded by the learned AR that even though Ld. CIT(A) was kind enough by directing the Jurisdictional AO to treat the assessee as not in default of taxes for the entire sum covered under TDS non-remittance, in accordance with the CBDT instruction no. 05/2013 dated 08/07/2013 and CBDT Press release dated 11/03/2016, Ld. CIT(A) ought to have allowed the appeal of the assessee instead of dismissing the same.

6.2. Learned AR also drawn our attention to the decision of the Hon'ble Delhi High Court in the case of Harshdip Singh Dhillon vs. Union of India [2024] 470 ITR 355 (Del) and the decision of the Co-ordinate Bench of the Tribunal in the case of Shri Rajesh Dadu vs. DCIT, in ITA No. 34/Hyd/2023 (AY. 2019-20), dt. 31/03/2023.

7. Per contra, learned DR while placing heavy reliance on the findings of the Revenue authorities, argued that the impugned order is a well reasoned order and the same may be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of the Revenue authorities along with the decisions relied upon. It is not disputed by the either of the party to the appeal that the TDS of Rs.13,50,000/- has not been deducted. It is an admitted fact that employer of the assessee i.e. M/s Karvy Stock Broking Limited has not deposited TDS of Rs. 13,50,000/-, after deducting the same from the salary paid to the assessee and in the absence of TDS not getting reflected in form 26AS, the CPC did not grant TDS credit to the assessee, however there is no fault on the-part of the assessee. On a careful consideration of the facts of the present case, we find that the issue in this appeal is similar to the issue decided by the Hon'ble Delhi High Court in the case of Harshdip Singh Dhillon vs. Union of India (supra), wherein the Hon'ble High Court decided the issue as under:

“.....

*7. On behalf of the Revenue, it was also contended that the petitioner cannot be allowed credit of tax because the credit has to be given in view of section 199 of the Act only when the tax deducted at source is paid to the Central Government, which admittedly was not so paid in this case. This contention was raised also in the case of Sanjay Sudan 1 but not accepted by this court.*

*8. Further, in the case of BDR Finvest Pvt. Ltd. v. Dy. CIT 2, W. P. (C) No. 9043 of 2021 decided by this court on October 31, 2023, it was clarified that payment of the tax deducted at source to the Central*

*Government has to be understood as the payment in accordance with law.*

*9. As held by this court in the case of Chintan Bindra v. Dy. CIT 3, the petitioner, having accepted the salary after deduction of Income-tax at source, had no further control over it in the sense that thereafter it was the duty of his employer, acting as tax collecting agent of the Revenue under Chapter XVII of the Act, to pay the deducted tax amount to the Central Government in accordance with law ; and for the employer of the petitioner having failed to perform his duty to deposit the deducted tax with the Revenue, the petitioner cannot be penalized. It would always be open for the Revenue to proceed against the employer of the petitioner for recovery of the deducted tax in accordance with law.*

*10. The issue pertaining to section 199 of the Act was also elaborately examined in the case of Pro CIT v. Jasjit Singh<sup>4</sup>, thus (page 342 of 470 ITR) :*

*"7. In this context, it is important to note that sub-section (3) of section 199 of the Act alludes to the power invested in the Central Board of Direct Taxes (CBDT) to frame rules as to how credit in respect of tax deducted or tax paid in terms of Chapter XVII is to be given. (see rule 37BA). Significantly, the Central Board of Direct Taxes is empowered to frame rules that may be necessary to give credit to a person 'other than those referred to in sub-section (1) and sub-section (2)' of section 199. Therefore, section 199, read in its entirety, does not limit credit only to those deductees whose deductors have deposited the amount with the Central Government.*

*7.1 Moreover, the expression 'and paid' to the Central Government found in section 199(1) must be contextualized in the setting in which it is placed, i. e., Chapter XVII, whereby, the sanctions for failing to deposit tax with the Central Government are laid on the payer/deductor.*

*1. Sanjay Sudan v. Asst. CIT, [2023] 452 ITR 107 (Delhi) ; 2023 SCC Online Delhi 1160 ; [2023]148 taxmann.com 329 (Delhi).*

*2. [2024] 462 ITR 141 (Delhi) ; 2023 SCC Online Delhi 8467.*

*3. [2024]470 ITR 346 (Delhi) ; 2023 SCC Online Delhi 7539.*

*4. [2024]470 ITR 337 (Delhi) ; 2023 SCC Online Delhi 7526.*

*7.2 Section 199, which is contained in Chapter XVII and, inter alia, includes provisions for collection and recovery of tax. Chapter XVII of the Act is divided into eight (8) parts.*

7.3 Part A, which is general, includes sections 190 and 191. Part B concerns deduction (of tax) at source. Part BB relates to the collection (of tax) at source. Part C pertains to advance payment of tax. Part D concerns collection and recovery of tax.

7.4 Part E concerns 'tax payable under provisional assessment' and includes sections 233 and 234 of the Act as omitted by the Taxation Laws (Amendment) Act, 1970 (with effect from April 1, 1971), and the Direct Tax Laws (Amendment) Act, 1987 (with effect from April 1, 1989), respectively.

7.5 Part F concerns interest chargeable in certain cases. Lastly, Part G provides for provisions for the levy of fees in certain cases.

8. As would be evident, Chapter XVII of the Act puts in place a legislative scheme for the collection of taxes by various modes, which includes direct levy (see section 191), deduction of tax at source, or collection at source.

8.1 Sections 192 to 195 and 196A to 1960 provide for the deduction of tax at source for payments made under various heads. For instance, payments made by way of salary, interest on securities, dividends, and interest (other than interest on securities), winnings from lotteries or crossword puzzle, and winnings from horse race are amenable to deduction of tax at source under sections 192, 193, 194, 194A, 1948 and 19488, respectively.

8.2 Likewise, payments made to contractors and insurance commission, payments made in respect of life insurance policy, and payments made to the non-resident sportsmen or sports associations are liable for deduction of tax at source under sections 194C, 1940, 1940A, and 194E, respectively.

8.3 As far as payments made to non-residents (not being a company), or to a foreign company are concerned, any interest (not being interest referred to in section 194L8 or section 194LC or section 194LO) or any other sum chargeable under the provisions of this Act (not being income chargeable under the head 'Salaries') payable to such non-resident is made amenable to deduction of tax at source under section 195 of the Act.

8.4 Specifically, the grossing up principle finds statutory recognition in section 198 of the Act. This is a principle, whereby, income which is payable, say, under any agreement/arrangement (in a case not referred to in section 192(1 A), and the tax chargeable on that income is required to be deducted by the payer, then the income is increased by the payer/deductor and offered to tax inclusive of the tax deducted at source,

8.5 Chapter XVII also contains provisions where, if tax is not deducted at source, it can be recovered from the payee. This is contained in sections 191 and 202 of the Act.

8.6. Significantly, Chapter XVII contains provisions for penalizing the payer/deductor when he fails to deposit the tax deducted at source with the Central Government. For instance, the Act provides for consequences qua the person who is obliged to deduct tax at source but fails to do so or, after deducting fails to deposit the same.

Under section 201, such a person is deemed to be an 'assessee-in-default' and would, upon this eventuality occurring, be liable to pay interest (see sub-section (1 A) of section 201).

8.7 Furthermore, the 'assessee-in-default' is also liable for imposition of penalty under section 221 of the Act. Besides this, outside Chapter XVII, penalty can also be levied under section 271 C.

8.8 In addition, thereto, a person who fails to deposit tax deducted at source, under the provisions of Chapter XVII-B, is liable for punishment with rigorous imprisonment under section 276B.

8.9 That said, both impositions of penalty and prosecution are subject to the defence of 'reasonable cause' as provided in sections 273B and 278AA of the Act, respectively.

9. Importantly, section 201 (2), provides that where a person who, although required to, does not deduct tax or does not pay the tax deducted at source or after deducting fails to pay wholly or part of the tax as required under the Act, would have a statutory charge created on his assets concerning both the tax as well as the interest payable under sub-section (1A) of the said provision.

10. Thus, in our opinion, the Act does not seem to cast a burden on the deductee-payee with regard to the deposit of money, which is retained as tax, by the payer, i. e., the deductor. Therefore, in so far as the deductee-payee is concerned, once the payer-deductor, who acts as an agent of the Central Government, has retained money towards tax, credit for the same cannot be denied, having regard to the consequences and the modes available for recovering the said amount from the payer-deductor.

11. In this particular case, the deductors are individuals who, concededly, after retaining the tax deducted at source did not fully deposit the same, as noted above, with the Central Government.

12. Upon the respondent-assessee becoming aware of this fact, a police complaint was lodged, which was brought to the notice of the appellants-Revenue. Despite this aspect being brought to the notice

*of the appellant-Revenue, no steps were taken either under the provisions of the Act or under the common law for recovery or even under the extant statute(s) for bringing deductors to book in accordance with the law.*

*13. In our opinion, the argument advanced by Mr. Bhatia that the amount deducted towards tax at source will not be given credit because the deductor has chosen not to deposit the amount with the Central Government is erroneous for another reason, which is that the nature of the amount retained by the deductor continues to remain as 'tax'.*

*13.1 This aspect clearly emerges upon perusal of the contents of the information provided in the Tax Payers Information Series-28 booklet titled 'Tax deduction at source (TDS) other than salaries' published by the Income-tax Department. The booklet notes that tax deducted at source will be treated as payment of 'tax' on the assessee's behalf. For convenience, the relevant part of the booklet is extracted hereafter :*

*'4.2 Credit of TDS. - Where taxes have been deducted at source from any payment of income receivable by an assessee, the amount of tax deducted at source would be included in the income of the assessee while computing the income of the assessee and would be deemed to be the income received (section 198). Further credit will be given to the assessee while calculating the net tax payable by him and the tax deducted at source will be treated as a payment of tax on his behalf (i. e., to the Central Government by the payer who has deducted the tax at source (section 199)).' (emphasis is ours)*

*14. The Act has, thus, provided a regime as to how tax is required to be collected against certain payments. Once the deductee adheres to the statutory regime and allows the deductor to retain money towards tax, the nature of the amount cannot change and, therefore, the deductee, in our view, would be entitled to the credit of the amount retained by the deductor towards tax. Any other view would result in a situation where even though the assessee would have grossed up his income (by including the tax deducted at source) and offered the same for taxation, he would be denied the benefit of having the resultant tax demand adjusted against tax deducted at source by the payer. This handicap the assessee-deductee (i. e., the respondent-assessee) would suffer only because the deductor, who acts as the agent of the Central Government, chooses not to deposit the amount retained towards tax."*

*10. The irresistible conclusion in view of the aforesaid is that since the petitioner accepted the salary after deduction of Income-tax at source, it is his employer who is liable to deposit the same with the Revenue authorities and on this count, the petitioner cannot be burdened. We find no substantial question of law to be considered by us in this appeal. Therefore, the petition is allowed and consequently the impugned demand notice dated February 4, 2019 is set aside and the respondent-Revenue is directed to allow credit of tax at source deducted by his employer for the assessment year 2013-14 to the petitioner.”*

8.1. Respectfully following the above said decision of the Hon'ble High Court (supra), we allow the grounds raised by the assessee.

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

Order pronounced in the open court on 30<sup>th</sup> day of April, 2024.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Sd/-  
**(MADHUSUDAN SAWDIA)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 30/04/2024

TNMM

Copy forwarded to:

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2. The Income Tax Officer, Ward-12(1), Hyderabad.
3. Pr.CIT, Hyderabad.
2. DR, ITAT, Hyderabad.
3. GUARD FILE

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