आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 1529/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2020-21

Shri. S. Sathyaraj, No. 13A, Brahadambal Road, Nungambakkam, Chennai – 600 034. **[PAN: AAFPS-6100-C]**	v.	Assistant Commissioner of Income Tax, Non Corporate Circle 10(1), Chennai – 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. J. Chandrasekaran, CA
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 16.04.2024
घोषणा की तारीख/Date of Pronouncement : 30.04.2024

आदेश /O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), Addl/JCIT(A)-1, Mumbai, dated 02.11.2023 and pertains to assessment year 2020-21.

2. The assessee has raised the following grounds of appeal:

"1. The Order of the Lower authorities is bad in law and contrary to the facts and circumstances of the Case.

2. The Lower Authorities have erred in not giving credit of TDS of INR 2,50,000 as the Appellant is not at fault for non-

payment of tax deducted by the deductors to the Government account.

3. The Lower Authorities have erred in not following the provisions of Section 205 of the Act, which provides that where tax is deductible at source, the assessee shall not be called upon to pay tax himself, to the extent to which tax has been deducted on such income.

4. The Learned CIT (A) erred in denying the benefit of the Tax deducted at source by the deductor on the ground that Tax is not credited to the Government A/c.

5. The Learned CIT (A) & Assessing Officer has failed to appreciate the fact that nonpayment of tax deducted by the deductor would make him the Assessee in default as per Section 201(1) of the Income-tax Act, 1961('the Act') and hence the recovery of tax must be made from the deductors and not from the Appellant. The Lower Authorities ought to have given Credit of tax deducted at source to the Appellant.

6. The Lower Authorities have failed to appreciate that the Assessee has repeatedly made efforts to contact the deductors to ensure payment of the tax deducted to the government and that since the deductors could not be traced, appellant efforts were unsuccessful.

7. The Lower Authorities have failed to appreciate the fact that section 143(1)(a) does not contemplate any adjustment of the credit for Tax Deducted at Source that has not been appearing in 26AS and which has been claimed while computing total tax liability as per return of income.

8. Alternatively the Lower Authorities have failed to appreciate that if credit of TDS is not allowed, the income assessed should be reduced by Rs. 2,50,000 as the same has neither been received by the assessee nor has it been paid to the government by the deductors.

9. Appellant craves leave to file additional grounds."

3. The brief facts are that, the assessee is an actor in feature films and also a producer of few feature films. During the assessment year 2020-21, the assessee has filed a return

of income on 31.10.2020, by declaring an income of Rs.8,32,15,950/-. The return was processed and accepted vide intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") with CPC No. CPC/2021/A3/156796605, dated 28.03.2021, reflecting a demand payable of Rs. 29,11,860/-. The assessee filed a rectification request u/s. 154 of the Act and claimed the TDS credit of Rs.23,80,000/-. Further, the assessee filed an appeal before the ld. CIT(A), Addl/JCIT(A)-1. During the appeal proceedings out of TDS credit denied, Rs. 21,30,000/- was paid by the deductor subsequently and the TDS credit for the same is given as reflected in Form 26AS. The ld. CIT(A), has passed an order on 02.11.2023 by not allowing TDS credit of Rs. 2,50,000/- for the reason that, the TDS credit is not available in Form 26AS of the assessee and directed the Assessing Officer not to enforce the demand.

4. The only issue before us is whether the tax credit on TDS made by the deductor not remitted to the department and also, it is not available in Form 26AS can still be given credit to the assessee. The Ld. Counsel for the assessee, in his written submissions stated that the tax has already been deducted at

source by the payer and furnished all the details of payment made to him after deducting tax, along with invoices and corresponding bank statements showing the receipts. The Ld. Counsel for the assessee, also relied upon the judgment of Hon'ble High Court of Judicature of Madras in the case of Executors of the Estate of S. Shanmuga Mudaliar vs ACIT & Others in TCA No. 388 of 2008 dated 11.08.2014, wherein the Hon'ble High Court has relied on the judgment of Bombay High Court in the case of Yashpal Sahni vs Rekha Hajarnavis vs ACIT, reported in [2007] 293 ITR 539 (Bom) and the judgment of Karnataka High Court in the case of Smt. Ansuya Alva vs DCIT reported in [2005] 278 ITR 206 wherein Court held that,

> *"the facts and circumstances of the above case is similar to the facts of the present case. Therefore, we have no hesitation to hold that the bar under sec. 205 of the Act prevents the department from demanding the tax deducted at source from the assessee who has suffered a deduction. Further, more now the liability rests with the official liquidator. Therefore, the Department is at liberty to proceed against the company in liquidation in the hands of the official liquidator by filing a claim for the amount in question".*

The ld. Counsel also stated that the above judgment is squarely applicable to the facts of the present case and

requested to allow the TDS credit of Rs. 2,50,000/- as TDS credit, which has already been deducted by the payers.

5. Per contra, the ld. DR, Shri. D. Hema Bhupal, has argued that the credit cannot be given by the Department unless the deductor has remitted to the exchequer of the Government and quarterly returns are filed by the deductor to reflect in Form 26AS of the assessee. Unless, these procedures are completed, the Department cannot give TDS credit to the assessee. Therefore, denial of the TDS credit, which is confirmed by the ld. CIT(A) is correct and required to dismiss the appeal of the assessee.

6. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the fact of TDS already been deducted is admitted and there is no dispute about the same. Admittedly, the assessee has produced and filed all the details of invoices raised, payment received after the deduction of tax at source and corresponding bank statements in support of the same. We have gone through the decision of Hon'ble High Court of Gujarat in the case of Kartik Vijaysinh Sonavane vs DCIT, 132 Taxmann.com 293, wherein

the Hon'ble High Court has pronounced that the Department has speculated from denying the benefit of tax deducted at source by the employer during the relevant financial years to the petitioner by relying on the judgment of Bombay High Court in the case of ACIT & Ors vs Om Prakash Gattani [2000] 242 ITR 638, this Court allowed the same. Vital would be to reproduce the relevant findings and observations.

> *"4. The issue is no longer res integra. The Division Bench of this Court in case of Sumit Devendra Rajani (Supra) examined the statutory provisions and in particular Section 205 of the Income-tax Act, 1961. The Court concurred with the view of the Bombay High Court in case of Asst. CIT VS. Om Prakash Gattani, reported in (2000) 242 ITR 638 and observed as under -*
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> > *"10. We are in complete agreement with the view taken by the Bombay High Court and Gauhati High Court. Applying the aforesaid two decisions of the Bombay High Court as well as Gauhati High Court, the facts of the case on hand and even considering Section 205 of the Act action of the respondent in not giving the credit of the tax deducted at source for which form no.16 A have been produced by the assessee - deductee and consequently impugned demand notice issued under Section 221(1) of the Act cannot be sustained. Concerned respondent therefore, is required to be directed to give credit of tax deducted at source to the assessee deductee of the amount for which form no.16 A have been produced.*
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> > *11. In view of the above and for the reasons stated petition succeeds. It is held that the petitioner assessee deductee is entitled to credit of the tax deducted at source with respect to amount of TDS for which Form No.16A issued by the employer deductor - M/s. Amar Remedies Limited has been produced and consequently department is directed to give credit of tax deducted at source to the petitioner assessee - deductee to the extent form no.16 A issued by the deductor have been*

issued. Consequently, the impugned demand notice dated 6.1.2012 (Annexure D) is quashed and set aside. However, it is clarified and observed that if the department is of the opinion deductor has not deposited the said amount of tax deducted at source, it will always been open for the department to recover the same from the deductor. Rule is made absolutely to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs."

5. Facts in both case are very similar. Under the circumstances, by allowing these petitions we hold that the Department cannot deny the benefit of tax deducted at source by the employer of the petitioner during the relevant financial years. Credit of such tax would be given to the petitioner for the respective years. If there has been any recovery or adjustment out of the refunds of the later years, the same shall be returned to the petitioner with statutory interest."

7. We also noted that Surat Benches of Tribunal in the case of Liladevi Dokania vs ITO in ITA NO. 126/SRT/2021 dated 27.06.2022, has considered similar situation, wherein the assessee received rental income and the tenant has deducted TDS, but has not remitted TDS, so deducted in the Central Government account. Considering these entire facts, we noted that issue under consideration is no longer res-integra by relying on the decision of Hon'ble High Court of Gujarat in the case of Kartik Vijaysinh Sonavane vs DCIT (Supra), wherein it has been held that whether TDS has been deducted by the employer, it will always been open for the department to recover the same from the deductor when credit of the same

have been denied to assessee and directed the Assessing Officer to verify the claim of the assessee and allow credit on TDS in accordance with law.

8. In the given facts and circumstances, we are of the considered view that in the present case, the particulars of TDS made by the payer to the assessee has been completely available. The claim of such TDS based on the deductions made by the payer has been claimed by the assessee as per the provisions of law. So far as, the assessee is concerned, he has no role in depositing TDS with exchequer. The statutory duty to deposit the amount deducted at source as tax is that of the person who is responsible to deduct the tax at source as per section 200 of the Act. The assessee only gets a certificate to that effect by the person responsible to deduct the tax. In a case where the amount has been deducted by the person responsible to deduct tax amount under statutory provisions, the assessee is not in control over the matter. The responsibility of such person is to the extent that he has to be deemed to be an 'assessee in default' in respect of tax. Going by the ratio laid down by the Hon'ble Gujarat High Court in the case of Kartik Vijaysinh Sonavane vs DCIT (Supra), we are of

the view that the tax has to be recovered from the deductor, but not from the assessee who is seeking credit.

9. In conclusion, the order of the ld. CIT(A) cannot be sustained by respectfully following the decisions of Hon'ble High Court of Judicature of Madras in the case of Executors of the Estate of S. Shanmuga Mudaliar vs ACIT (supra) and Karnataka High Court in the case of Smt. Ansuya Alva vs DCIT (supra) and Surat Bench of Tribunal, in the case of Liladevi Dokania vs ITO (Supra), we direct the Assessing Officer to give credit on TDS claimed by the assessee as per the provisions of Act.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 30th April, 2024 at Chennai.

Sd/-	**Sd/-**
(महावीर सिंह)	**(एस. आर. रघुनाथा)**
(MAHAVIR SINGH)	**(S. R. RAGHUNATHA)**
उपाध्यक्ष **/Vice President**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 30th April, 2024
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent

3.आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF