



BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.0391/PUN/2024

निर्धारण वर्ष / Assessment Year : 2020-21

Gera Holdings Pvt. Ltd.,
200, Gera Plaza, Boat Club Road,
Pune – 411 001
PAN : AAACG6704C

..... अपीलार्थी / *Appellant*

बनाम / V/s.

Dy. Commissioner of Income Tax,
Pune

..... प्रत्यर्थी / *Respondent*

द्वारा / *Appearances*

Assessee by : Mr Nilesh Khandelwal ['Ld. AR']

Revenue by : Mr Keyur Patel ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 30/05/2024

घोषणा की तारीख / Date of Pronouncement : 03/06/2024

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The assessee is in appeal against the DIN & Order No. ITBA/NFAC/S/250/2023-24/1059156659(1) dt. 28/12/2023 passed u/s 250 of the Income-tax Act, 1961 [in short 'the Act'] by the National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)/NFAC'] which in turn arisen out of order of regular assessment dt. 27/09/2022 framed u/s 143(3) of the Act by the Dy. Commissioner of Income Tax/Asstt unit [in short 'Ld. AO'].

2. After hearing rival contentions of both the parties; subject to the rule 18 of Income Tax Appellate Rules, 1963 [in short 'ITAT-Rules'] we examined the material placed on record.



3. The substantive issue raised in two grounds in the present appeal hinges around denial of credit of Tax Deducted at Source [in short 'TDS'] and Self-Assessment Taxes [in short 'SAT'] paid u/s 140A of the Act.

4. It is observed that, in a regular scrutiny assessment, the assessee's returned income of ₹45,41,86,250/- was accepted without variation and the credit of TDS & SAT was restricted to the extent it was appearing in Form 26AS as on that date. It is the case of the assessee that, during the year under consideration, owing to merger/acquisition of commercial leasing business of one of its group companies, the assessee while filing its return of income has not only offered the leasing/rental of such demerged unit in its return but also claimed accompanying TDS credit which was deducted thereagainst in the hands of such demerged company/unit, which however denied by the Revenue. *Per contra* the Revenue's version is that, out of the total TDS claimed in the return by the assessee, a TDS amount of ₹2,30,44,142/- was deducted by Barclay Global Service Centre Pvt. Ltd. against the payment to one of its group company [in short 'sister concern']. Since such TDS wasn't reflected in assessee's Form 26AS, the credit of such TDS was denied though income offered thereagainst was assessed in the hands of assessee. The Revenue averred that, TDS credit appearing against the PAN of demerged unit/company is lawfully available exclusively to demerged company. If the same is also allowed to assessee then it would lead to granting double credit against single kitty collection, thus leakage to ex-chequer's treasury. Granting TDS credit to assessee is impermissible unless demerged company bequeaths or renounces/forgoes its right to claim in favour of assessee. In absence of any such pass-on, the action of denial by the tax authorities is justified.



5. Though we find force in the objection of the Ld. DR Mr Patel 'as to how it was possible for the Ld. AO who framed an assessment on 27/09/2022 to grant/give credit the amount of SAT-140A of ₹3,49,39,300/- which was paid on 21/04/2023' that is paid much after framing of assessment order u/s 143(3) of the Act, the Ld. AR Mr Khandelwal adverting to entry no 2 of PART-C of Form 26AS dt. 27/05/2024 (updated) however clarified that, owing to preliminary denial of aforesaid TDS credit, the assessment resulted into tax demand which is paid on 21/04/2023 under the head minor code 400 i.e. against tax demand.

6. We are mindful to the fact that, in any case, an assessee by virtue of provisions of section 199 is entitled to claim credit of all such TDS deducted by a payer of income in accordance with the provisions of chapter XVII of the Act and paid to the credit of central ex-chequer by a deductor/payer. This credit of TDS is however made available to an assessee only upon filing of periodic TDS statement by a deductor/payer. That is to say unless such TDS credit is reflected in Form No 26AS of a claimant assessee/payee no claim thereagainst can be honoured while assessing the income either u/s 143(1) or u/s 143(3) of the Act.

7. In the instant case, though the leasing business income/rental on which TDS is claimed by the assessee company has been booked in its books, offered to tax in its return and assessed as such, however neither during the course of assessment proceedings nor first appellate proceeding the assessee could produce any confirmation from the demerged company that the corresponding TDS has not been claimed by it in its return and has indeed transferred such TDS to the assessee company in accordance with the provisions of statute.



8. It is an admitted fact that, at the relevant time of framing of assessment u/s 143(3) of the Act and at the time of passing the impugned order u/s 250(6) of the Act, the aforesaid TDS Credit was not appearing in assessee's Form 26AS but came updated thereafter, therefore we see no infirmity with the action of both the tax authorities below. This however has undergone a change.

9. The present position as brought on record vide latest Form 26AS dt. 27/03/2024 clearly reflects the updated position of TDS & SAT credit available to the assessee for the year under consideration. In the event of Revenue's, no-objection, without disturbing the impugned orders, we direct the Ld. AO to grant full credit of taxes as appearing in the Form 26AS at the earliest and within four weeks from the date of receipt of this order.

10. The appeal of the assessee in result is ALLOWED in above terms.

In terms of rule 34 of ITAT Rules, 1963 the order is pronounced in the open court on this Monday 03rd day of June, 2023.

-S/d

S. S. GODARA
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 03rd day of June, 2024.

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

1. अपीलार्थी / The Appellant.
4. The CIT, Central, Pune

2. प्रत्यर्थी / The Respondent.
5. DR, ITAT, "A" Bench, Pune.

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The NFAC, Delhi (India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.