

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **302/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2018-19

Surya Motors, Near DAV Campus, Hanuman Road, Abohar	Vs. बनाम	The DCIT, Central Circle-3, Ludhiana
स्थायी लेखा सं./PAN No: AADFS2727B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (written submissions)

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 27.05.2024

उदघोषणा की तारीख/Date of Pronouncement : 24.06.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana (herein referred to as 'CIT(A)') dated 10.03.2023.

2. Grounds of appeal are as under:-

1. That on the facts & in the circumstances of the case, Ld. CIT (A) erred in rejecting the claim of TDS of Rs. 41157/- relating to National insurance Co. Ltd.

2. *That on the facts & in the circumstances of the case, Ld. CIT (A) erred in rejecting the claim of TCS of Rs. 13764/- relating to CRETA CAR, owned & used by the firm, purchased in the named partner Sh. Bharat Saneja, who neither claimed & nor allowed any ICS in his return of income for A.Y. 2018-19.*

3. *That on the facts & in the circumstances of the case, Ld. CIT (A) erred in rejecting the claim of TDS of Rs. 36993/- relating to Shri Ram City Union Finance Ltd.*

4. *That without prejudice to ground No 1 to 3 disallowance of credit of TDS is excessive & unreasonable.*

5. *That the humble appellant prays for permission to add or amend any grounds of appeal before disposal of the appeal.*

3. During proceedings before us, the ld. Counsel of the Assessee has filed a letter dated 3.4.2024 in which he has requested to dispose of the appeal on the basis of written submissions already filed. The main part of his letter is reproduced as under: -

“With due respect, it is humbly submitted that the aforesaid appeal is fixed for hearing on 04/04/2024. I have already sent written-submission & paper-book in duplicate with your office on 23/01/2024 vide Registered Post receipt No. RP198346063IN with reference to your email communication dt. 22/01/2024 and the same was acknowledged by your office on 24/01/2024. So you are requested to consider written submission sympathetically before disposal of the appeal as it

will not be possible for me to attend your honour court due to some health problem.”

4. The Id. DR had no objection to dispose of the appeal on the basis of written submissions and merit and he also relied on the orders of the Assessing Officer and CIT(A).

5. Brief facts of the case are that the Assessee is a partnership firm engaged in the business as a dealer of Hero Motorcorp since 1992 and has regularly been filing its return of income. It filed the return of income for A.Y. 2018-19 on 04/10/2018 declaring an income of Rs. 80,69,160/- comprised of normal business income of Rs. 70,29,160/- and dividend income of Rs. 10,40,000/- taxable u/s 115BBDA vide acknowledgement No. 320880041041018, claiming therein credit for TDS at Rs. 3,21,355/- and TCS at Rs.13,764/- besides Advance-Tax paid at Rs. 13,00,000/- and self-assessment tax at Rs. 7,20,130/-. TDS claimed at Rs. 3,21,355/- is comprised inter-alia of Rs. 88,483/- (47326+41157) relating to incentive of Rs. 8,84,833/-received from National Insurance Co. Ltd. & Rs. 8,640/- relating to Shri Ram City Union Finance Ltd. On incentive of Rs. 1,50,805/- received in F.Y. 2017-18. The return of income was revised on 06/10/2018 for the same income. It was rectified on 30/12/2019 vide acknowledgement No. 281256461301219 claiming therein claim of additional TDS of Rs. 36,993/- making total claim of TDS Rs. 44,633/- (8640+36993)

relating to incentive of Rs. 8,90,666/- received from Shri Ram City Union Finance Ltd. In F Y. 2017-18. The claim of TDS was rectified for Rs. 36,993/- on the basis of 26AS dt. 28/12/2019. In place of 26AS dt. 24/09/2018 though there was no variation in returned income. Further, in, response to requisition all information called for from time to time were furnished. But the Assessing Officer assessed the Assessee on an income of Rs. 8,65,846/- u/s 143(3) vide order dt. 29/09/2021 and created a demand of Rs. 11,35,385/-. But while computing demand the Assessing Officer did not give any reason for non-allowance credit for TDS of Rs. 78150/- (41157 + 36993) and TCS of Rs. 13,764/-. In appeal before Id. CIT(A), Id CIT(A) vide order dt. 10/03/2023 granted inter-alia relief of Rs, 5,89,302/ in the assessed income but rejected the claim of Assessee regarding TDS at Rs. 78150/- (41157 + 36993) and TCS at Rs. 13764/-.

6. The finding of the Id. CIT(A) on different Grounds of appeal are as under:-

“Claim of TCS of Rs. 13,764/-

The AR has also claimed TCS of Rs. 13,764/- on Creta Car bought by the partner of the assessee firm but the same is not reflected in the Form 26AS of the appellant, thus, the same has been rejected by the AO during the assessment proceedings. The AR stated that the said car has been bought by the partner, however, the same is being used by the Appellant firm only and the AR also stated that as per the provisions of section 199 of the Act the claim

of the TCS should be granted to the assessee as the said car has been disclosed in the books of accounts of the appellant firm. The AR also stated that the partner of the firm has not claimed such amount of TCS in his return of income.

The submissions filed by the AR in this regard have been considered. As per the provisions of TCS and Income Tax Act, an assessee can claim TCS in the subsequent year also or by way of return filed u/s 119 or in any other proceedings opened subsequently and in order to safeguard the interest of the Department, the assessee is liable to provide the Indemnity Bond assuring to indemnify the Department in the case of any loss occurring on account of duplicate claim of such TDS/TCS by an assessee. It is a fact on record that the appellant has neither furnished any return of the income of the subsequent year of the partner nor has filed an indemnity bond with regard to the claim of such TCS. Hence, the claim of TCS of Rs. 13,764/- cannot be allowed to the appellant and thus, the claim of the TCS of Rs. 13764/- is hereby rejected and ground of appeal No. 6 is dismissed.

5.5 Ground of Appeal No. 7: This Ground of Appeal is in respect of claim of TDS of Rs. 36,993/- and the submissions filed by the assessee have been considered. The AR stated that the applicant has claimed the TDS of Rs. 8,640/- in its return against the income of Rs. 7,28,533.66. The AR stated that the deductor namely Shri Ram City Union Finance Ltd., has revised its return of TDS and on the basis of same additional TDS amounting to Rs. 36,993/- has been claimed by the assessee during the appellate proceedings.

The submissions of the assessee have been gone through along with the documents filed. It is an undisputed fact that the assessee has claimed a lower amount of TDS against the lower amount of income which is clear from the copy of computation of income filed by the assessee and is also an undisputed fact that no revised return of income has been filed by the assessee subsequently in order to claim such TDS. Moreover, the assessee has also not filed any evidences regarding the fact that the correct amount of TDS has been disclosed in the books of accounts of the appellant. Thus, following the judgment of the Apex Court in the case of Goetze (India) Ltd. Vs. CIT reported in 284 ITR 323 no new claim of TDS can be made by the assessee without filing a revised return of income and hence the claim of TDS amounting to Rs. 36,993/- is hereby rejected and the grounds of appeal is here by dismissed.”

7. We have considered the finding of the ld. CIT(A) and have also considered the written submissions filed by the Assessee on these issues. The ld. CIT(A) has denied the claim of TDS of Rs. 41,157- and Rs. 36,993/- along with another TDS claim of Rs. 8,640/- and TCS of Rs. 13,764/- on the basis that the Assessee has failed to file any evidence regarding claim of correct amount of different TDS. The Assessee has also failed to file details regarding TDC claim and TCS claim before the CIT(A). During the proceedings before us, although the Assessee has filed a paper book comprising of many documents but from these documents it is not clear that the Assessee’s claim is correct. In fact, nothing has been filed as per the claim in the Grounds

of appeal. From the letter of the Assessee it is also not clear whether Assessee had filed all these documents before the authorities below. Therefore, in the absence of any certificate for the same it is not possible to consider the claim of the Assessee in the appellate proceedings. It is also found that even the documents filed do not reflect items of claim of TDS and TCS of the Assessee.

8. Keeping in view the facts discussed above, Assessee's appeal on Ground Nos. 1, 2, 3 and 4 is dismissed.

9. Ground No.5 is general in nature.

10. In the result, the appeal of the Assessee is dismissed.

Order pronounced on 24.06.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

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 आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar