

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.695/MUM/2024  
Assessment Year: 2017-18**

<b>Shri Dinyar Homi Sidhva</b> 3-F, Sea Breeze, St. John Baptist Road, Mount Marry Steps, Bandra, Mumbai - 400050 <b>PAN: AALPS6274M</b>	Vs.	<b>National Faceless Appeal Centre (NFAC)</b> Office of the Assistant Commissioner of Income Tax, Circle-19(2), Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri R. V. Shah (Partner)  
Revenue by : Smt Mahita Nair, SR D.R.

Date of Hearing : 11 . 06 . 2024  
Date of Pronouncement : 28 . 06 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 05.01.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section

250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

**2.** In the instant case, the assessee being an individual having earned income from salary, house property, business and profession and other sources, had declared his total income at Rs.35,71,110/- including the amounts of Rs.32,10,580/- & Rs.2,22,138/- received on account of salary income and other allowances respectively from GOL Off Shore Ltd., on which the TDS amount of Rs.5,72,469/- was deductible as per the salary slip received from the said company. The said salary income was in arrears and was not received by the assessee.

**3.** The CPC processed the return filed by the Assessee and vide intimation dated 13.06.2018 under section 143(1) of the Act, disallowed the TDS credit of Rs.5,72,469/- and added the same in the income of the assessee.

**4.** The Assessee, being aggrieved, challenged the said addition/disallowance before the Ld. Commissioner and claimed that if the Deductor deducted the TDS but not deposited in the Govt. account, then the Assessee is not liable for any taken as per section 205 of the Act, which was considered by the Hon'ble Bombay High Court in the case of Yashpal Sahni vs. Rekha Hajarnavis, Assistant Commissioner of Income-tax (2007) 165 taxmann 144 (Bom.).

However, the Ld. Commissioner not being impressed with the said claim of the Assessee, affirmed the action of the Assessing Officer (AO) for not allowing the claim of TDS on the ground "*that the amount*

*stated to has been deducted as per the Assessee's salary slips but not reflecting in form 26AS, as the same was not deposited by the Deductor. What is not available cannot be given. It is a circumstance where the employer had defaulted for no fault of the employee. But the Government cannot be penalized for the same".*

**5.** The Assessee, being aggrieved, is in appeal before us.

**6.** Heard the parties and perused the material available on record. No doubt there is a bar against direct demand on the assessee qua TDS wherever the tax is deductible at the source and the Assessee cannot be called upon to pay the tax himself to the extent to which tax has been deducted from that income and therefore as per the provisions of section 205 of the Act , as well as the judgment rendered by the Hon'ble Jurisdictional High Court in the case of Yashpal Sahni (supra) wherein it has been clearly held that where the assessee has established that from his salary income tax has been deducted at source by the employer, therefore the Revenue has to recover the said TDS amount with interest and penalty from the employer alone and the Revenue cannot seek to recover the said amount from the assessee in view of the specific bar contained under section 205 of the Act.

**6.1** Hence, the AO is directed to verify as to whether the employer has deducted the TDS from the salary of employees and grant the credit of TDS accordingly, suffice to say the Revenue department is at liberty to seek recovery of TDS amount along with interest or penalty, if any, from the employer but not from the employee, the assessee herein.

**7.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 28.06.2024.**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.