

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "D", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.698/ahd/2023
Assessment Year : 2021-22

Shiva Pharmachem Limited Shiva 12 th Floor, Opp. Tricolour Hospital Genda Circle, Vadodara-390 023 (Gujarat)	Vs	The Dy.CIT Circle-2(1)91 Vadodara
PAN: AAJCS 3940 B		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Sunil Talati, AR
Revenue by :		Shri Sudhakar Verma, Sr.DR

सुनवाई की तारीख/Date of Hearing : 01/07/2024
घोषणा की तारीख /Date of Pronouncement: 04/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal by Assessee is filed against the order of Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre - Delhi [hereinafter referred to as "the Ld.CIT(A)"] passed on 24/07/2023 u/s. 250 of the Income Tax Act,1961 (hereinafter referred to as "the Act") instituted against the order dated 19/12/2022 passed by the Assistant Director of Income Tax, CPC, under section 154 of the Income-tax Act, 1961, for the Assessment Year (AY) 2021-22.

Facts of the Case:

2. The assessee, M/s.Shiva Pharmachem Limited, filed its original return on 09/02/2022 declaring a total income of Rs.64,88,10,170/-. The assessee entered into a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013, with M/s.Tash Investment Pvt. Ltd., as approved by the NCLT order dated 10th September 2020. The effective date of this scheme was 01st April-2019.

2.1. Since, the order of NCLT was issued on 10th September-2020, the operation of amalgamated and merged company i.e. of M/s.Tash Investment Private Limited continued till the date of such order and accordingly income was aroused till the date of such order. The TDS credit was also generated for the above-mentioned income till the date of order of NCLT.

2.2. Due to the effect of NCLT order, the company, M/s. Tash Investment Private Limited was amalgamated and merged with the assessee company M/s.Shiva Pharmachem Limited with effect from 01/04/2019, the income till the date of order was transferred in the books of the assessee-company and was also offered for tax while filling return of income for the respective years. Accordingly, TDS credit relating to such income has been claimed while filing Income tax return for the A. Y. 2021-22.

2.3. The assessee-company booked and offered for tax an income of Rs.99,22,532/- of merged entity M/s.Tash Investment Pvt. Ltd in F. Y. 2019-20 relevant to A.Y, 2020-21, however the TDS receivable of which Rs. 9,92,253/claimed in the return of F.Y. 2020-21 relevant to A.Y. 2021-22.

2.4. Moreover, the assessee-company also booked and offered for tax an income of Rs.2,00,000/- of merged entity M/s.Tash Investment Pvt. Ltd in F. Y. 2020-21 relevant to A.Y. 2021-22 and claimed the TDS receivable of Rs.17,000/- in return of income of F. Y. 2020-21 relevant to A.Y. 2021-22.

2.5. The CPC, Bengaluru, passed a rectification order under section 154 of the Act on 19/12/2022, where the credit of TDS amounting to Rs.10,09,254/- was not granted.

2.6. The assessee filed an appeal against the order of CPC, Bengaluru and the Ld.CIT(A) dismissed the appeal stating that the assessee has failed to file a declaration as per proviso to sub-clause (i) and the procedures as per sub-clause (ii) and (iii) of clause (2) of Rule 37BA.

3. Now, the assessee is appeal before us with following grounds of appeal:

"The appellant being dissatisfied with the order passed by the learned Commissioner of Income Tax (Appeals), NFAC, u/s 250 of the Act, dated 24/07/2023, presents this appeal against the said order on the following amongst other grounds:

1. *The order passed by the learned CIT(A) is bad in law, being contrary to the provisions of the Act and without considering the written submission of the appellant and therefore be quashed.*

2.

i) The learned CIT(A), NFAC has erred in confirming the addition made by the CPC, Income Tax department on account of not granting credit of TDS/TCS amounting to Rs. 10,09,254/-.

ii) For the year, the appellant Company M/s Shiva Pharmachem Limited entered into schemes of arrangement under section 230 to 232 of the Companies Act 2013 with M/s Tash Investment Pvt. Ltd. vide NCLT Order dated 10th September 2020. The effective date of such schemes is 01st April 2019.

iii) Accordingly, the appellant company has considered and offered the Income of merged entity M/s Tash Investment Pvt. Ltd amounting to Rs. 99,22,532/- in the ITR of A.Y 2020-21. The TDS credit of Rs. 9,92,254/- of the mentioned income of A.Y. 2020-21 was claimed in the ITR of A.Y. 2021-22. Also, the appellant company has considered and offered the income of merged entity M/s Tash Investment Pvt. Ltd amounting to Rs. 2,00,000/- in the ITR of A.Y. 2021-22 and has accordingly claimed the TDS credit of Rs. 17,000/- the ITR of AY 2021-22.

iv) The CPC, Income Tax Department, while processing return of income has considered the income offered of the amalgamated and merged entity of M/s. Tash Investment Private Limited, but has erred in not granting TDS credit receivable of the sald income.

v) The Ld. CIT(A) has erred in understanding basic fundamental that if a business, along with its assets and liabilities, is transferred by one owner to another, a benefit (TDS credit) so transferred would be entitled to the same treatment in the hands of successor.

vi) Moreover, the appellant also wants to invite attention on the judgement of the hon'ble ITAT Hyderabad in the matter of Ces Limited, Hyderabad vs Dy. Commissioner of Income Tax. Dated 21.11.2019 wherein the identical issue was covered, and the Hon'ble ITAT has held that "we agree with the contention of the assessee that when the amalgamated results or income of the amalgamating company has been taken into consideration, then the credit for advance tax paid and TDS made by amalgamating company should be given to amalgamated company i.e. assessee before us."

Therefore, the Ld. CPC, Income Tax Department be directed to grant claim of the credit of TDS amounting to Rs. 10,09,254/- to the Appellant company.

Your appellant craves for leave to alter/amend/withdraw/modify any of the above grounds and/or to add any ground before hearing."

4. The Ld.Counsel for the assessee contended that due to the scheme of arrangement, the operations and income of the amalgamated and merged

company, M/s.Tash Investment Pvt. Ltd., continued until the date of the NCLT order. The TDS credit for the income generated during this period was claimed in the assessee's tax return for the A.Y. 2021-22. However, while processing the return, the CPC considered the income but did not grant the corresponding TDS credit. He also placed reliance on **decision of Mumbai Bench of ITAT in case of Culver Max Entertainment Pvt. Ltd. Vs. Asst. Commissioner of Income Tax, Circle-13(2)(2) in ITA No. 7685/MUM/2019 and ITA No. 925/MUM/2021.** The Hon'ble Mumbai Bench of the ITAT has addressed a similar issue in the case of Culver Max Entertainment Pvt. Ltd. in ITA No. 7685/MUM/2019 for A.Y. 2015-16 and ITA No. 925/MUM/2021 for A.Y. 2016-17. In this case, the ITAT directed the AO to allow TDS credit even if the TDS certificates were in the name of the amalgamated/demerged company, provided the relevant income was assessed in the hands of the assessee. While deciding so, the Tribunal relied on similar decisions in the following cases:

- Popular Complex Advisory P Ltd vs. ITO (ITA No.595/Kol/2023 dated 22nd August, 2023).
- Adani Gas Ltd vs. ACIT (ITA Nos.2241 & 2516/Ahd/2011 dated 18-01-2016).
- Ultratech Cement Ltd vs. DCIT (ITA No.1412/Mum/2018 & others dated 14.12.2021).

4.1. In these cases, it was held that the resulting company in a demerger and the transferee company in a transfer are eligible to claim TDS credit even if the TDS certificates are in the name of the demerged/transferor company.

5. The Ld.Departmental Representative relied on the order of the Ld.CIT(A) and pointed out the procedural part of the rule 37BA. However, it was noted that the assessee itself is Deductor and Deductee company is a merged entity. Therefore, the Ld.CIT(A) should have decided on the facts and merits of the case.

5.1. Following the aforementioned decisions of the Co-ordinate Benches, we set aside the order of the Ld.CIT(A) and direct the AO to allow the TDS credit to the assessee, after verifying that the relevant income has been assessed in this year.

6. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 4th July, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER
Ahmedabad, Dated 04/07/2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A) - (NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad