IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.3803 to 3805/Del/2023
Assessment Years: 2016-17 to 2018-19

Jotindra Steel and Tubes Ltd., 602, Chiranjiv Tower, 43, Nehru Place, New Delhi – 110 019. PAN: AAACJ1872C	Vs	ACIT, Central Circle-3, New Delhi.
(Appellant)		(Respondent)

Assessee by	: Shri Ved Jain, Advocate & Ms Supriya Mehta, CA
Revenue by	: Ms Parul Singh, Sr. DR
Date of Hearing	: 24.06.2024
Date of Pronouncement	: 05.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Assessee against the orders dated 15.11.2023, 15.11.2023 and 29.11.2023 of the Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeals No.CIT(A), Delhi-23/10284/2018-19, No.CIT(A), Delhi-23/10332/2019-20 and No.CIT(A), Delhi-23/10268/2017-18 arising out of the appeal before it against the orders dated 06.12.2018, 28.12.2019 and 14.07.2021, respectively, passed u/s 143(3) of the Income Tax

Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Central Circle-3, Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record.

2.1 There are two issues in these appeals.

First is the challenge of action of CIT(A) in confirming the non grant of credit of TDS for want of Form 16A. This issue is common in three appeals.

Second issue is specific to AY 2017-18 arising out of alleged error in in computing the demand in the computation sheet at the assessee income of 3,61,38,607/- as against the income of Rs. 3,58,17,440/-

3. In regard to issue no. 1 as casted above, we take relevant facts of AY 2016-17. Brief facts of the case are that the assessee company had filed its ITR on 15.10.2016 declaring total income of Rs 2,54,22,670/-. Tax payable on such income was computed to be Rs.87,70,730/- . However, the assessee had paid an advance tax amounting to Rs. 15,00,000/- and tax was also deducted at source of Rs.90,04,694/-. Thus, a total tax amounting to Rs. 1,05,04,694/- was accordingly paid by the assessee as against the liability to pay tax of Rs.87,70,730/-. Therefore, the assessee claimed a refund of Rs. 17,33,960/- being excess tax paid by the assessee. Thereafter, the case of assessee was selected for scrutiny and nothing adverse was found. Accordingly, the income of the assessee was assessed at returned income. However, the refund was denied and a demand notice u/s 156 for Rs.65,73,207/- was issued to the

assessee owing to shortfall in the amount of TDS credit being granted to the assessee.

3.1 Aggrieved by the order passed by AO, assessee filed an appeal before CIT(A). During the course of appellate proceedings, it was submitted by the assessee that:

i. That the corresponding income on which tax has been deducted by the deductor has been duly accounted for in the books of the assessee.

ii. Complete details of tax deducted by the deductor has been furnished by the assessee which also forms part of the ITR Form 6 filed by the assessee placed at PB Pg.5-40. Relevant party wise details of tax deducted at source is at PB Pg.37-38.

iii. It was also submitted by the assessee that its customers-M/s Ultra Home Construction Pvt. Ltd. and M/s Amrapali Infrastructure Pvt. Ltd. belongs to "AMRAPALI" Group of companies and the group has done various financial irregularities and their bank accounts were ordered to be attached by the Hon'ble Supreme Court vide order dated 01.08.2018. A copy of such order is placed at PB Pg. 168-181. Accordingly, there was a possibility that TDS deducted by the deductors was not deposited with the Central Government.

iv. A detailed submission (PB Pg.85-93) explaining the amounts of tax deducted by each deductor was filed along with Party wise TDS chart duly supported by ledger account of respective heads of income,

concerned parties and TDS. Such documents are placed at PB Pg. 94-167.

4. However, CIT(A) was not satisfied and held as follows;

"16. On perusal of the above document, it is seen that it is not clear as to who is the person who has signed the document. Further, whether it is signed by the authorised person of the deductor company or not is not evident. Above document filed by appellant is duly signed by someone wherein PAN No. AACU6772G is mentioned which is PAN of deductor company i.e. M/s Ultra Home Construction P Ltd. But who had signed this document and in which capacity is not clear. Further, stamp is also not available on this document nor this document is printed on official letter head of deductor. In the document, for the period ended December 2016, the interest credited is shown at Rs.9,60,97,431/- and TDS deducted is shown as Rs. 96,09,743/-. The amount of interest for FY 2015-16 and FY 2016-17 is not mentioned. Therefore, the document is considered as self serving document. On the basis of above document, it cannot be logically and empirically inferred that there was any deduction of TDS by the deductor. Thus, the appellant has not been able to establish the fact that TDS was actually deducted. It is an undisputed fact that the TDS (if deducted) was never paid into government account.

17. Appellant is failed to produce any documentary evidence (Form 16A issued by the deductor) in support of his claim that such TDS was deducted. Mere filing of ledgers not establishes the fact that TDS has been deducted.

18. Credit of TDS is based on deposition of the same by respective deductor. Appellant had submitted copy of Form 26AS (page no 51-56 of paper book submitted on 13.11,2023) wherein also respective TDS amounts are not reflecting. Since amount of TDS totalling to Rs.1,32,90,467/- not appearing in Form 26AS provided by appellant himself, credit of same could not be granted by Assessing Officer.

19. The appellant has drawn attention towards the provisions of section 205 of me Act and has stated that in the light of provisions of section 205, the Assessing Officer cannot make any recovery from him. The appellant has also drawn attention to the decision of Hon'ble Delhi High Court in the case of Incredible Unique Buildcon Pvt. Ltd. (2023)

153 Taxmann.com 179 (Delhi), On perusal of these, it is seen that there is bar on recovery of demand. However, the present appeal is in respect of not giving credit of TDS in respect of the amount which is not reflected in the 26AS form. As such no infirmity is seen in the order of the Assessing Officer in not granting credit of TDS when there is no evidence to show that the TDS was deposited by the deductor.

20. From the appeal of the appellant, it is evident that the appellant is in appeal against the recovery proceedings. However, against the recovery proceedings, the appeal before the CIT(A) do not lie. In the list of appealable order u/s 246 and in the list of appealable orders before Commissioner (Appeals) u/s 246A of the Act, there is no mention of recovery proceedings order. Thus, it is beyond the jurisdiction of the undersigned CIT(A) to decide on the issue of recovery of demand. On this ground also, the arguments of the appellant is liable to be dismissed."

5. At outset, reliance is placed, by Ld. Counsel on the decision of the ITAT Mumbai in the case ***Bhupendra C. Dalal vs. ACIT, 2023 (8) TMI 1173 – ITAT Mumbai, dated July 18, 2023*** wherein it has been held that where the assessee is aggrieved by the part of the assessment order, such an order is appealable so far as section 246A is concerned:

> *"012. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, in this case, the assessment orders for all these three years are passed under Section 143(3) read with section 254 of the Act. In the assessment order itself, the learned Assessing Officer has charged interest under Section 234A, 234B, 234C and also interest under Section 220(2) of Page | 9 ITA Nos. 2388 to 2390/Mum/2022 Bhupendra C Dalal; A.Y. 1991-92 to 1993-94 the Act. Admittedly, the appeal is a statutory right. If the statute does not confer any right on the assessee to file the appeal, same cannot be filed. In view of this, the issue is to be decided whether the appeal filed by the assessee is maintainable or not. According to the provisions of Section 246A of the Act any assessee who is aggrieved by 'Specified orders' may appeal to the Commissioner Appeal. Therefore, the basic condition to section 246A pre supposes that there has to be an order listed in Section 246A (1) of the Act. There are approximately 28 types of the orders listed. The second condition is that assessee must be aggrieved by those orders. Admittedly, in this case, the order of assessment passed under Section 143*

(3) of the Act. Therefore, specified order is assessment order passed under Section 143(3) of the Act. This order is listed in section 246A (1) (a) of the Act. Therefore it is one of the specified orders against which appeal can be preferred before the LD CIT (A). In this assessment order, the learned Assessing Officer has charged interest under Section 234A, 234B, 234C and also under Section 220(2) of the Act. The assessee is aggrieved by part of the order passed under Section 143(3) read with section 254 of the Act, wherein the learned Assessing Officer has charged interest under Section 234A, 234B, 234C and also 220(2) of the Act. Therefore, there is a specified order i.e. order under Section 143(3) of the Act by which assessee is aggrieved and therefore, assessee is entitled to file an appeal in the present case before the learned CIT (A) u/s 246A (1) (a) of the Act . It is not the case of the Revenue that assessment order is not specified order under Section 246A (1) of the Act and assessee is not aggrieved with that. Therefore, we are not in agreement with the order of the learned CIT (A) that the appeals of the assessee are not maintainable. The learned CIT (A) therefore, should have decided the issue on its merit. Therefore, we categorically hold that the appeals filed before the learned CIT (A) for all these assessment years were wrongly dismissed holding it to be not maintainable. According to us, same is maintainable and those are liable to be decided on the merits of the case."

5.1 Ld. DR has not contested this aspect of maintainability of appeal before the CIT(A). Accordingly to that extent we follow the Mumbai Bench order and we hold that appeal was maintainable before the CIT(A).

6. Then coming to the question if Assessee can be held liable for the deficit tax at source which was deducted and pocketed by the deductor we find that the assessee has furnished complete party wise details of the tax deducted at source by the deductor along with respective TAN of each party which is forming part of ITR Form 6 (relevant page 37-38). Such details were also filed before CIT(A), placed at PB Pg.94. No discrepancy or anomaly has been pointed out in the documents and submission placed on record by the assessee. No independent verification or inquiry has been made from the deductor with

respect to the tax deducted at source of the assessee despite the fact that assessee had furnished the complete details – Name, TAN etc. to the AO as well as CIT(A). It is also not the case of the AO or CIT(A) that the corresponding income has not been declared by the assessee.

6.1 Now only because the tax was not deposited by the deductor to the account of the Central Government, the assessee has been denied the credit of tax deducted and a corresponding demand has been raised. We are of considered view that denial of such benefit of credit is complete contravention to provisions of Section 205 of the Act. Section 205 is being reproduced hereunder for the sake of ready reference:

> *"Bar against direct demand on assessee.*
>
> *205. Where tax is deductible at the source under [the foregoing provisions of this Chapter], the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income."*

6.2 It is clear from the above-mentioned provisions of Section 205 of the Act that in cases where tax has been deducted from the income of the asssessee, no further tax shall be called upon from the assessee. The natural corollary to same being that assessee has a right to get the credit of that TDS amount qua the demand against him. Reliance is placed on the following judicial pronouncements wherein it has been held that once tax has been deducted, it's the responsibility of the deductor to deposit the same with the government,

deductee can not be penalized and demand can not be raised on short fall of TDS on deductee:

- SANJAY SUDAN VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX & ANR., 2023 (2) TMI 1079 - DELHI HIGH COURT, Dated: - 17-2-2023, where in Hon'ble Delhi High Court has held as follows;

> *"9.2 The fact that the instruction merely provides that no coercive measure will be taken against the assessee, in our view, falls short of what is put in place by the legislature via Section 205 of the Act. 10. Therefore, in our view, the petitioner is right inasmuch as neither can the demand qua the tax withheld by the deductor/employer be recovered from him, nor can the same amount be adjusted against the future refund, if any, payable to him. 11. Thus, for the foregoing reasons, we are inclined to quash the notice dated 28.02.2018, and also hold that the respondents/revenue are not entitled in law to adjust the demand raised for AY 2012-13 against any other AY. It is ordered accordingly. 12. Notably, in paragraph 7 of the writ petition, the petitioner has adverted to the fact that he is entitled to refund of Rs.1,94,410/- in respect of AY 2015-16."*

- INCREDIBLE UNIQUE BUILDCON PRIVATE LIMITED VERSUS OFFICE OF THE INCOME TAX OFFICER WARD (12) (1) NEW DELHI, 2023 (10) TMI 625 - DELHI HIGH COURT, Dated: - 3-10-2023, where in again Hon'ble Delhi High Court has held as follows;

> *"7. There is no dispute that in the present case, it was mandatory duty of Clutch Auto Ltd to deduct tax at source qua the payments made to the nonapplicant/assessee. Also not in dispute is the legal proposition that vide Section 205 of the Income Tax Act, where the tax is deductable at source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from his income."*
>
> *8. No doubt, Form 16A is amongst others, a piece of evidence which can establish deduction of tax at source. That said, Form 16A is not*

the only piece of evidence in that regard. In a case where the assessee can show reliable material other than Form 16A and prima facie establish the deduction of tax at source, in our view the assessee cannot be denied benefit of the provisions of Section 205 of the Act. The assessee cannot be left at mercy of the tax deductor, who for multiple reasons may not issue Form No. 16A and/or may not deposit the deducted tax.

9. In the present case, the non-applicant/assessee admittedly declared in his return of income the tax deducted at source by Clutch Auto Ltd and supported the same with his ledger account. We are not oblivious that ledger account is not the conclusive evidence. But at the same time, we find no reason for failure on the part of the review applicant to carryout any inquiry if they were not satisfied about truthfulness of claim of the non applicant/assessee qua the tax deducted at source.
…
11. Despite the aforesaid, concerned officers of the review applicant opted not to quench their baseless doubt by way of detailed inquiry qua deduction of tax at source and came up with this review application raising the unsustainable differentia of Form 16A. The review applicant being the State and the non-applicant/assessee being the citizen, the latter cannot be burdened with the responsibility to somehow procure Form 16A to secure benefit of the provision of Section 205 of the Act.

12. We are in respectful agreement with the view taken by the Bombay High Court in the case of Yashpal Sahni (supra) to the effect that from language of Section 205 of the Act, it is clear that the bar operates as soon as it is established that the tax had been deducted at source and it is wholly irrelevant as to whether the tax deducted at source is deposited or not and whether Form No. 16A has been issued or not.

13. In view of the aforesaid, we are unable to find any error, much less an error apparent on the face of record which would persuade us to engage in reviewing the impugned order dated 31.05.2023. The review application is, thus, dismissed.

- INCREDIBLE UNIQUE BUILDCON PRIVATE LIMITED VERSUS OFFICE OF THE INCOME TAX OFFICER WARD (12) (1) NEW DELHI, 2023 (6) TMI 1135 - DELHI HIGH COURT, Dated: - 31-5-2023

"13. Clearly, what follows is that while respondent/revenue cannot recover the deficit tax at source from the petitioner, which was deducted and pocketed by CAL, and they cannot also refuse to grant credit for the same. The rationale being what the appellant/revenue cannot do directly, it is impermissible for it to reach the same end indirectly."

- SHRI CHINTAN BINDRA VERSUS DEPUTY COMMISSIONER OF INCOME TAX & ORS., 2023 (12) TMI 63 - DELHI HIGH COURT, Dated: - 29-11-2023

"4. That being so, the core issue to be considered by us is as to whether any recovery towards the said outstanding tax demand can be effected against the petitioner in view of the admitted position that the tax payable on salary of the petitioner was being regularly deducted at source by his employer namely Kingfisher Airlines Ltd. who did not deposit the deducted tax with the revenue.

5. The said issue stands covered by the judgment of this court in the case of Sanjay Sudan vs Assistant Commissioner of Income Tax, [2023] 148 taxmann.com 329 (Delhi)…

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10. In view of the aforesaid, the petition as well as the interim relief application (CM APPL 6192/2022) are allowed, thereby setting aside the intimations/communications dated 21.03.2011 pertaining to Assessment Year 2009-10; dated 23.10.2012 pertaining to Assessment Year 2011-12; and dated 16.01.2014 pertaining to Assessment Year 2012-13, all intimations/communications issued by respondent no. 3 under Section 143 of the Act raising demands of tax and interest against the petitioner and consequently, restraining the respondents from carrying out any recovery proceedings pertaining to the said intimations/communications; and also directing the respondents to refund to the petitioner within four weeks from receipt of this order a sum of Rs. 3,88,209/- which was wrongly adjusted by the respondents against the impugned demands pertaining to the above mentioned Assessment Years. However, it is clarified that in case the petitioner is able to obtain any amount of money towards tax deducted from his income at source for the Assessment Years 2009-10, 2011-12 and

201213 from his employer, the same shall be deposited by him with the revenue forthwith."

- THE PR COMMISSIONER OF INCOME TAX – 15 VERSUS JASJIT SINGH, 2023 (12) TMI 34 - DELHI HIGH COURT, Dated.- November 2, 2023

> *"14. The Act has, thus, provided a regime as to how tax is required to be collected against certain payments. Once the deductee adheres to the statutory regime and allows the deductor to retain money towards tax, the nature of the amount cannot change and, therefore, the deductee, in our view, would be entitled to the credit of the amount retained by the deductor towards tax. Any other view would result in a situation where even though the assessee would have grossed up his income [by including the tax deducted at source] and offered the same for taxation, he would be denied the benefit of having the resultant tax demand adjusted against tax deducted at source by the payer. This handicap the assessee/deductee [i.e., the respondent/assessee] would suffer only because the deductor, who acts as the agent of the Central Government, chooses not to deposit the amount retained towards tax."*

- SHRI RAJESH DADU HYDERABAD VERSUS DY. C.I.T. CIRCLE 4 (1) HYDERABAD, 2023 (4) TMI 61 - ITAT HYDERABAD, Dated.- March 31, 2023, the proposition is further expanded by allowing credit of such TDS:-

> *"3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income for the impugned A.Y on 31.10.2019 declaring total income at Rs.1,57,94,132/- and paid tax of Rs.53,85,276/- consisting of advance tax of Rs.30,00,000/- and tax deducted at source of Rs.25,05,786/- and claimed a refund of Rs.1,20,510/-. The CPC Bengaluru in the intimation u/s 143(1) did not give credit of Rs.10,11,000/- being the TDS u/s 194IA of the Act by Mr. Pradeep Ramrakhyani.*
>
> *10. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A)-NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case sold his immovable property for a*

consideration of Rs.10,11,00,000/- to one Mr. Pradeep Ramrakhyani who deducted TDS of Rs.10,11,000/- under the provisions of section 194IA but the same was not deposited by the vendee into the credit of the Central Govt. A/c and he had not uploaded Form No.26QB. We find the CPC therefore, did not give TDS credit of Rs.10,11,000/- in the intimation passed u/s 143(1) and the CIT (A)-NFAC upheld the action of the CPC, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that once the deductor has deducted the tax at source withholds tax out of payments due/paid to the assessee, but does not deposit the tax withheld by it, the assessee should not suffer for the same and due credit of the TDS is to be given to the assessee and action under the provisions of the Act can be taken against the deductor who after deducting the tax has not deposited the same to the credit of the Central Govt.

14. The various other decisions relied on by the learned Counsel for the assessee also support his case to the proposition that the Revenue cannot deny the TDS credit to the assessee and the only option left for the Revenue is to proceed against the deductor by holding him to be an assessee-in-default. We, therefore, set aside the order of the CIT (A)-NFAC and direct the CPC to give due credit of Rs.10,11,000/- to the assessee. The grounds raised by the assessee are accordingly allowed."

- PUSHKAR PRABHAT CHANDRA JAIN VERSUS UNION OF INDIA AND ANR.,2019 (2) TMI 243 - BOMBAY HIGH COURT, Dated.- January 30, 2019

"2. Petitioner has challenged a notice dated 5th February, 2018 issued by the respondent No.2 Income Tax Officer under Section 226(3) of the Income Tax Act, 1961 ("the Act" for short). The petitioner has further prayed for refund of a sum of ₹ 3,67,600/ already recovered from the petitioner and to permanently restrain the respondents from recovering balance amount of ₹ 6,69,250/for which a further notice dated 10th September, 2018 was issued by the respondent No.2.

8. The situation arising in the present petition is similar. The department does not contend that the petitioner did not suffer deduction of tax at source at the hands of payer, but contends that the

> *same has not been deposited with the Government revenue. As provided under Section 205 of the Act and as elaborated by this Court in case of Yashpal Sahni (supra) under such circumstances the petitioner cannot be asked to pay the same again. It is always open for the department and infact the Act contains sufficient provisions, to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit the same with the Government revenue scrupulously and promptly. If the payer after deducting the tax fails to deposit it in the Government revenue, measures can always be initiated against such payers."*

6.3. Thus we are of considered view that CIT(A) has fallen in error to misinterpret the judgement relied upon by the assessee by holding that there is merely bar on recovery of demand but does not lay down law for giving credit of TDS in respect of the amount which is not reflected in the 26AS form. The bar on recovery of such disputed TDS is specific and the credit of same to be given to assessee is natural consequence. Further, we are of firm view that inability of an assessee to procure form 16A, due to intentional mischief of the deductor cannot be basis to refuse grant of credit of TDS or the refund arising consequent to giving credit, if assessee is otherwise eligible for same. This issue in all the appeals is decided infavour of assessee.

7. In regard to second issue we find that issue requires examination of certain facts and consequential effects, which are of arithmetical nature. Accordingly, the second issue of AY 2017-18 is allowed for statistical purposes. The AO shall make necessary verification and pass an order accordingly.

8. The appeals accordingly stand allowed with consequences to follow as directed above.

Order pronounced in the open court on 05.07.2024.

Sd/-	Sd/-
(G.S. PANNU) VICE PRESIDENT	(ANUBHAV SHARMA) JUDICIAL MEMBER

Dated: 05th July, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi