

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1078/M/2024
Assessment Year: 2019-20**

Shailendra Naredrakumar Minocha 1.103, A Wing, Nirmal Galaxy Polaris, Nr. Deep Mandir, Love and Latte Coffee Shop, Mulund(West). 2. 624, Nirmal Corporate Center PAN: AHTPM8211H	Vs.	Ward 41(4)(4) Kautilya Bhavan, B. K. C. Bandra (East), Mumbai.
(Appellant)		(Respondent)

Present for :

Assessee by : None

Revenue by : Shri R. R Makwana- SR. D.R.

Date of Hearing : 18 . 06 . 2024

Date of Pronouncement : 26 . 07 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/APL/S/250/2023-24/1060015742(1) Dated 23/01/2024 for the Assessment Year 2019-20.

2. Following grounds of appeal have been raised by the appellant:

1. *“ In the facts and circumstances of the case and in law, Ld. Addl/JCIT - (A)-1 has erred by not granting the TDS credit claimed u/s. 192 of the Act of Rs.1,10,000/- only on the ground that the said TDS was not deposited by the employer (Nirmal Lifestyle Ltd.) to the treasury of government. Thereby confirming the intimation passed u/s 143(1) of the Income Tax Act, 1961 by the CPC. Further the CPC has not allowed the claim of TDS under intimation as per section 143(1) of I.T.Act, 1961 merely on account of non-deposit of TDS by employer.*
2. *In the facts and circumstances the Ld.Addl/JCIT (A) has passed an order without considering the justification provided to them through submissions. Also the Ld.Addl/JCIT has failed to provide the appellant with opportunity of video conferencing.*
3. *The appellant reserves the right to add, alter, or amend any ground or grounds of appeal on or before the hearing.”*

3. The facts of the case, in brief, are that the M/s. Shailendar Narendrakumar Minocha, the Appellant, is deriving income mainly from salary, capital gains, and Income from other sources. The appellant has filed his original return of income for A.Y. 2019-20 on 19/03/2020 declaring total income at Rs.10,08,080/-. The appellant then received an intimation order u/s.143 (1) of Income Tax Act, 1961 dated 18/05/2020 raising a demand of Rs.1,29,300/- The said demand had arisen on account

of TDS mismatch. The appellant had claimed TDS of Rs.1,20,912/- in his ITR but CPC gave credit of Rs.10,912/- only.

4. Aggrieved by the order of the CPC, appeal was filed before the Ld. CIT (A) who dismissed the appeal on the ground that *“the evidence filed by the appellant the monthly salary slips for the whole 12 months April to March prove that the appellant has received a salary of Rs.4 lakhs per month and Rs. 48 lakhs in the whole year. The appellant has also filed copy of the bank statement and this also proves that he has received the net salary as per the monthly salary slips for the whole 12 months April to March. The appellant has filed original returns on 21-08-2019 declaring the salary as per salary slips and has later revised the returns declaring lesser salary. The reasons for this are unknown and not explained by the appellant. The evidence filed by the appellant in support of the claim that TDS is made by the employer is not matching with the entries in the ITR filed. Hence the claim of the appellant that case laws support the claim that the employee is not at the default of the non-deposit of the TDS by the employer and credit must be given for the TDS cannot be allowed as the income declared by the appellant is not matching with the supporting evidence filed. The grounds raised by the appellant are not allowed.”*
5. Aggrieved by the order of the Ld. CIT (A), the present appeal has been filed. During the appellate proceedings before us, no one appeared from

the assessee's side, however, 'Statement of Fact' was filed before us through which the appellant submitted that the appellant cannot be blamed for non deposit of tax by the employer in Government treasury. The appellant also placed reliance on the decision of the High Court of Gujarat in the case of Sumit Devendra Rajani vs. ACIT Special Civil Application No. 2349 of 2014 and Hon'ble High Court Gujarat decision in the case of Devarsh Pravinbhai Patel vs. ACIT Circle 5(1)(1) Special Civil Application No.12965 of 2018.

6. We have considered the above submissions and direct the Ld. AO to verify the claim of the appellant whether tax deducted by the employer was actually deposited in the Government treasury and if the claim of the appellant is correct then why there is a TDS mismatch. The AO then take a decision accordingly. The appellant is also directed to present its case before the AO along with all evidence in its possession.
7. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 26.07.2024.

Sd/-
AMIT SHUKLA
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 26.07.2024.
Snehal C. Ayare, Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.