

□□□□ □□□□□□ □□□□□□, □□□□□□□□ □□□

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.559/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2019-20)

Shri Prashant Singh Bararia, Hyderabad. PAN:AGCPB3805E	<b>Vs.</b>	Income Tax Officer, Ward-12(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	S/Shri E.V. Sri Krishna and C.S. Subramaniyam, C.As	
राजस्व द्वारा / Revenue by:	Shri Madan Mohan Meena, DR	
सुनवाई की तारीख / Date of hearing:	12/08/2024	
घोषणा की तारीख / Pronouncement:	28/08/2024	

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M:**

This appeal is filed by Shri Prashant Singh Bararia, Hyderabad ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 31.05.2022 for the A.Y. 2019-20.

2. At the outset, it is seen that, there is a delay of 665 days in filing of this appeal for which the assessee has furnished condonation petition containing the reasons for delay along with an affidavit. After considering the submission of Ld. AR and after hearing the Learned

DR ("Ld. DR"), the delay of 665 days in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. The grounds raised by the assessee are as under :

*" 1. The order of the learned Assessing Officer is erroneous in law and on the facts of the case.*

*2. The CIT(A) erred in not granting tax credit for Rs.50,13,819 from Jet Airways Limited for the sole reason that the same was not appearing in assessee's Form No.26AS.*

*3. The CIT(A) erred in not granting tax credit for Rs.50,13,819 having accepted and concluded that the employer neither paid the salary nor deposited the tax the Department, which irregularity cannot be attributed to the assessee.*

*4. The CIT(A) erred in not following the CBDT Memorandum vide F.No.275/29/2014-IT(B) dated 11/03/2016 wherein it was directed that the officer cannot recover the tax deducted from the assessee, for the default of deductor, even though such memorandum was brought to the notice of CIT(A) during the proceedings.*

*5. The CIT(A) erred in not following the judgment of Hon'ble Gujarat High Court in the case of Kartik Vijaysinh Sonavane (2021) 132 taxmann.com 293 (Gujarat) wherein it was held that the Department cannot recover the tax deducted from the assessee, for the default of deductor, even though such decision was brought to the notice of CIT(A) during the proceedings.*

*6. The CIT(A) erred in not passing the order either for grant of tax deduction or for reduction of salary income for the last three months which was never received by the assessee.*

*7. Any other ground that may be raised during the appellate proceedings with the prior permission from the Hon'ble Tribunal."*

4. The facts of the case in brief are that the assessee was an employee of Jet Airways (India) Limited (employer) acting as a pilot, filed his return of income for A.Y. 2019-20 on 31.08.2019 declaring total income of Rs.1,46,64,050/-. In the return of income the assessee had included salary and claimed TDS credit of Rs.11,71,444/- for the months of January, 2019 to March, 2019 on the basis of pay slip received from the company. However, the employer neither paid the salary to the assessee nor deposited

the TDS to the credit of the Revenue. Therefore, the TDS credit of Rs.11,71,444/- was not reflecting in Form No.26AS of the assessee. The Central Processing Centre, Bengaluru (CPC) processed the return u/s.143(1) of the Income Tax Act, 1961 ("the Act") on 26.05.2020 taking the returned income of the assessee, but disallowing the claim of TDS credit of Rs.11,71,444/- due to the reason that the same was not reflected in the Form No.26AS and raised a demand for Rs.13,96,448/-.

5. Aggrieved by the intimation of CPC, the assessee filed appeal before the Ld. CIT(A), who dismissed the appeal of the assessee as per his observation under para no.4 of his order, relevant portion of which is reproduced as under :

*" 4. Decision:*

*I have considered the facts of the case, written submission and material on record. This appeal is arising out of the intimation u/s 143(1) of the IT Act, 1961 dated 26.05.2020 wherein TDS Credit amounting of Rs. Rs.38,88,656/ allowed against appellant claimed amounting to Rs. 50,13,819. Further, the appellant submitted facts of the case in Form 35 before me as under:*

*" It is observed that the Employer (Deductor) of the appellant has neither paid the salary to the appellant nor has remitted the tax to the department. In view of the facts available before me, the appeal of the appellant is hereby dismissed. The assessee however may file a revised ITR to the appellant by declaring correct income for the year under consideration by filing an application for revision of income as per law before jurisdictional Commissioner of Income Tax."*

6. Aggrieved by the order of Ld. CIT(A) the assessee is in appeal before us. The Ld. AR submitted that in the return of income the assessee had included salary and claimed TDS for the months of January, 2019 to March,

2019 on the basis of pay slip received from the employer. However, the employer neither paid the salary to the assessee nor deposited the TDS for the months of January, 2019 to March, 2019. Therefore, the TDS of Rs.11,71,444/- for the corresponding was not reflecting in Form No.26AS of the assessee. Consequently, the CPC processed the return u/s.143(1) of the Act on 26.05.2020 taking the returned income of the assessee, but disallowing the claim of TDS credit of Rs.11,71,444/- due to the reason that the same was not reflected in the Form No.26AS and raised a demand for Rs.13,96,448/-.

7. The main contention of the Ld. AR before us was on two issues. The first claim of the assessee is that, the assessee is eligible for credit of TDS of Rs.11,71,444/-, which has been deducted from him and not deposited by the employer. In their alternate claim, the Ld. AR submitted that, as the assessee has not received the salary for the period from Jan., 2019 to March, 2019, the same should be reduced from the total income.

8. With regard to their first claim, the Ld. AR relying on the decision of Hon'ble Gujarat High Court in the case of Kartik Vijaysinh Sonavane Vs. DCIT (2021) 132 taxmann.com 293 (Guj), submitted that, as the TDS of Rs.11,71,444/- has been deducted from the assessee, the assessee is eligible for the credit of the same.

9. Per contra, the Ld. DR relied on the decision of Ld. CIT(A) and submitted that, as the employer has not deposited the amount of TDS to the credit of the revenue, no credit can be allowed to the assessee.

10. We have heard the rival contentions and also gone through the records in the light of submissions made by either side. There is no dispute about the facts that no TDS has been deposited to the credit of the revenue. It is also a fact that no salary has been paid to the assessee for the period from Jan. 2019 to Mar. 2019. As no salary has been paid to the assessee, in our considered opinion it cannot be assumed that TDS has been deducted by the employer from the assessee. The decision relied on by the Ld. AR in the case of Kartik Vijaysinh Sonavane Vs. DCIT (supra), there was deduction of TDS by the deductor, however, there is no deduction of TDS by the employer in the case of the assessee. Therefore the case of the assessee is different from the case of Kartik Vijaysinh Sonavane Vs. DCIT (supra). Therefore we are of the considered opinion that in the absence of actual deduction of TDS by the employer from the assessee, no credit for the TDS can be allowed to the assessee. Accordingly, we dismiss this ground of the assessee.

11. With regard to their alternate claim the Ld. AR submitted that the assessee has not received the salary for the period from Jan., 2019 to Mar., 2019 from the company. Therefore, the amount of salary which is not received by the assessee should be reduced from the total income of the assessee.

12. Per contra, relying on the order of Ld. CIT(A), the Ld. DR submitted that the salary is taxable in the hands of the assessee on accrual basis. He further submitted that even if salary for the period from Jan., 2019 to March, 2019 has been received by the assessee, the same cannot be reduced from the total income of the assessee.

13. We have heard the rival contentions and also gone through the records in the light of submissions made by either side. To have a better understanding of the issue, it is relevant to go through section 15 of the Act, which states that which income shall be chargeable under the head ‘Salaries’, the same is reproduced as under :

*“15. The following income shall be chargeable to income-tax under the head "Salaries"—*

*(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;*

*(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;*

*(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.*

*Explanation 1.—For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.*

*Explanation 2.—Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.”*

14. From the perusal of the above, it is abundantly clear that as per section 15(a) of the Act, any salary which is due from an employer, whether paid or not, are liable to be taxed under the head Salary. Therefore in our

considered opinion, if any salary has become due from an employer, the same is liable to be taxed, whether it is paid by the employer or not. There is no dispute about the fact that salary for the period from Jan., 2019 to March, 2019 had become due to the assessee. Therefore, in our considered opinion the salary for the period from Jan., 2019 to March, 2019 is liable to be taxed in the hands of the assessee under the head Salary. Accordingly, we dismiss this ground of the assessee .

15. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 28th Aug., 2024.**

**Sd/-**

**(LALIET KUMAR)**  
JUDICIAL MEMBER

**Sd/-**

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 28.08.2024.

*\* Reddy gp*

**Copy of the Order forwarded to :**

1. Shri Prashant Singh Bararia, 1-2-593/34, Flat No.301, Block-A, Gagan Mahal Colony, Hyderabad-500 029
2. ITO, Ward 12(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,