

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
ITA No.1909/De1/2024,A.Y.2019-20**

Varsha Himanshu Mehta A 2, Tulja House, Ashima Tower, Behind Sunrise park, Bodakdev, Ahmedabad, Gujarat, PAN: EUDPM1487A	Vs.	DCIT, Circle Int. Tax 1(1)(1), Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Pritesh Shah, CA
Respondent by	Shri K.K. Mishra, Sr. DR

Date of Hearing	21/10/2024
Date of Pronouncement	21/10/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2019-20 filed by the assessee is directed against the order dated 22.03.2024 passed by the Commissioner of Income Tax (Appeals)-42, New Delhi [hereinafter, the 'CIT (A)'].

2. The sole issue of grievance is related to non-allowance of credit of TDS of Rs.1,85,49,860/-.
3. The brief facts of the case for deciding this appeal are that the assessee, a Non-Resident Indian (hereinafter, the 'NRI'), sold her co-

owned property situated at Ahmedabad to Mr. Kamlesh Keshavlal Gondalia for sale consideration of Rs.15,51,00,000/-. The assessee's ownership in the said property is 50%. The Buyer/Purchaser of the property deducted tax (TDS) @ 23.92% on the sale consideration of Rs.15,51,00,000/-. The appellant/assessee filed her Income Tax Return (hereinafter, the 'ITR') showing Long Term Capital Gains (LTCG) and interest income and claiming TDS credit of Rs.1,85,49,960/- (50% of TDS on the sale consideration of Rs.15,51,00,000/-). The Assessing Officer (CPC), while processing the ITR under section 143 of the Income Tax Act, 1961 (hereinafter, the 'Act') did not allow the claim of TDS of Rs.1,85,49,960/- on the reasoning that the said TDS was not getting reflected in the Form No. 26AS of the appellant assessee as the Deductor/Buyer of the property did not pay the amount of TDS in the Government exchequer. Due to disallowance of claim of the TDS, the demand of Rs.68,98,020/- was raised on the appellant/assessee. Thereafter the appellant/assessee filed a rectification application under section 154 of the Act, which was rejected by the Assessing officer. The appeal filed against the order passed under section 154 of the Act by the assessee did not find any favour from the CIT(A).

4. At the outset, the Ld. Authorized Representative (hereinafter, the 'AR') submitted that the TDS amount had been duly deducted by the Buyer of the property; however, he had failed to deposit the same in the

Government exchequer. This was an offence on the part of the Deductor/Buyer of the property under the Act liable for prosecution. It was contended that the appellant/assessee got penalized for the default which was not committed by her. The demand raised by the Revenue, thus could not be enforced. The Ld. AR prayed for allowance of the credit of TDS as per law after verification by the Assessing officer. To which, the Ld. Senior Departmental Representative agreed.

5. We have heard both the parties and have perused the material available on record. In view of facts of the case in entirety, we deem it fit to set aside the impugned order and remit the matter back to the file of the Assessing officer for further verification and allowance of the claim of TDS as per the law.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 21st October, 2024

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 21/10/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent

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3. CIT
4. DCIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI