

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC - B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT**

ITA No.1777/Bang/2024
Assessment Year : 2016-17

M/s. Jyothy Industries, No.21/10A, Konanakunte Cross, Kanapura Road, Bangalore – 560 062. <b>PAN : AACFJ 1010 H</b>	Vs.	DCIT, Circle – 3(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. B. S. Balachandran, Advocate Shri. Gurudatta D, CA
Revenue by	:	Shri. Ganesh R Gale, Standing Counsel for Department.

Date of hearing	:	24.10.2024
Date of Pronouncement	:	28.10.2024

**ORDER**

***Per George George K, Vice President:***

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 21.08.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2016-17.

2. The grounds raised read as follows:

1. *The order of the learned CIT(A) is contrary to law and facts of the case and is not maintainable in law.*

2. *The learned CIT(A) erred in upholding the denial for credit of TDS to the appellant erroneously, relying on the proviso to Rule 37BA of ITR 1962 on the premise that the appellant has not shown to have filed a declaration as required by rule 37BA of Income Tax Rule 1962 and proviso to Rule 37BA of Income Tax Rule 1962, to the deductor.*
3. *The learned CIT(A) erred in not appreciating the legal position that the proviso to rule 37BA cannot be so interpreted as to deny the credit for TDS as required by the provision of section 198/199 as held by the Hon'ble appellate tribunal, Pune, in the case of Anil Ratanlal Bohara VS ACIT (ITA NO.675/PUN/2022). Since that decision is binding as stated above in the case of the appellant before the tribunal vide statement of facts.*
4. *The learned CIT(A) also failed to appreciate that tax deducted at source has to be mandatorily adjusted towards the taxes finally determined in the assessment as held by the Karnataka High Court in the case of Gopala Ramanarayan vs Third ITO [126 ITR 369].*
5. *The learned CIT(A) also erred in not following the settled law that procedural provision or technicality cannot be allowed to defeat substantial justice as held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs Katiji and others — 167 ITR 471 (SC).*
6. *The learned CIT(A) also erred in not appreciating the legal position that the property of the firm can stand in the name of the partner of a firm and similarly a TDS relating to the firm can stand in the name of the partner and the mere fact that the TDS stands in the name of partner is not a ground for denial of the credit to the firm. In view of the facts that the partner has not claimed the credit for the same in her personal assessment because income relating thereto belongs to the firm and accepted and assessed as such by the income tax department.*
7. *For these or such other grounds that may be urged during the hearing, it is prayed that this appeal may be allowed in the interest of equity and justice.*

3. Brief facts of the case are as follows:

Assessee is a firm. The immovable property belonging to the assessee firm was compulsorily acquired by the Bangalore Metro Rail Corporation (BMRC). During the year, assessee received compensation of Rs.2,43,09,783/-. On the said compensation paid to assessee firm, BMRC had deducted tax at Rs.24,30,978/-. Assessee, for the Assessment Year 2016-17 had declared long-term capital gains on sale of aforesaid property which was compulsorily acquired by BMRC. The long-term capital gains declared in the return of income was accepted in the assessment completed under section 143(3) of the Act (Order dated 08.12.2018). However, the credit of TDS of Rs.24,30,978/- was not given by the AO in the computation of taxable income. The reason for not giving credit was that the said property was in the name of one of the partners of the assessee firm and tax deducted at source on compensation was shown by the deductor in the name of the partner of the assessee firm. Hence, the credit of TDS was not given by the AO.

4. Aggrieved by not granting the credit of TDS amounting to Rs.24,30,978/- deducted by the BMRC, assessee firm filed appeal before the First Appellate Authority (FAA). The CIT(A) held that since assessee has not filed a declaration from the deductor under Rule 37BA(2) of the Income Tax Rules, 1962 (hereinafter referred to as the Rules), assessee would not be entitled to the claim of credit of TDS. The relevant finding of the CIT(A) reads as follows:

*“The above submission has been examined with reference to deductor to the Income-tax authorities. This means that the credit shall be given to the deductee whose name is appearing in TDS statement furnished by the deductor which is captured in Form the provisions of section 199 read with Rule 37BA of the Income-tax rules, 1962(hereinafter referred to as Rules). As per Rule 37BA(1), the credit for TDS shall be given to the person to*

*whom payment has been made(hereinafter referred as deductee) on the basis of information relating to deduction of tax furnished by the 26AS. In the present case, the TDS is admittedly appearing in the name other than the appellant's name. However, as per Rule37BA(2), the credit can be given to a person other than deductee, if the corresponding income is assessable in the hands of such other person. But, for that the deductee has to file a declaration with the deductor containing details of the person to whom credit is to be given, corresponding amount of payment and the reasons for giving credit to such person and the deductor has to report the TDS in the name of such other person in the TDS statement and issue TDS certificate in the name of such other person. In the present case, nothing has been placed on record to show that the above procedure in terms of Rule 37BA(2) has been adopted by the appellant. In view of these facts and the provisions of Act and the Rules, there is no legal infirmity in not allowing the TDS credit in the name of the partner. Accordingly, the grounds No. 2 & 3 are dismissed.”*

5. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. The learned AR relied on the grounds raised.

6. The learned Standing Counsel supported the Order of the CIT(A).

7. I have heard the rival submissions and perused the material on record. Admittedly, in this case, assessee firm in its return of income had declared long-term capital gains on the compulsory acquisition of the property by the BMRC. However, TDS credit for the same was not given for the reason that the said property was in the name of one of the partners of the assessee firm and tax deducted at source on compensation paid was shown in the name of the said partner of the assessee firm. Section 199(1) of the Act states that whole or any part of the income on which tax has been deducted at source shall be treated as payment of tax on behalf of deductee. However, section 199(3) of the Act states that credit can be granted to a person other than deductee. The relevant portion of section 199(3) of the Act reads as follows:

*“The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) ....”*

8. The above sub-section (3) of section 199 of the Act recognizes that where the income on which tax was deducted at source in hands of ‘X’ is actually chargeable to tax in hands of ‘Y’, credit for TDS on such income shall be allowed to ‘Y’. The relevant rule framed by Board is Rule 37BA of the Income Tax Rules, 1962. Sub-rule (1) provides that credit for tax deducted at source shall be granted to the person to whom payment has been made or credit has been given. Sub-Rule (2) which is material for the instant case read as follows:

*“(2) (i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*

*Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).*

*(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.”*

9. The Pune Bench of the Tribunal in the case of Anil Ratanlal Bohra Vs. ACIT in ITA No.675/Pune/2022 for Assessment Year 2021-22 (Order dated 19.01.2023) had held that proviso to Rule 37BA(2) of the Rules is just a procedural aspect to give effect to the mandate of section 199 for allowing credit to the other person in whose hands the income is chargeable to tax. It was further stated by

the Hon'ble ITAT that non-compliance of procedural provision which is otherwise directory in nature cannot disturb the writ of a substantive provision. It was concluded by the Pune Bench of the Tribunal that 'merely because of non furnishing of declaration in terms of proviso to Rule 37BA of the Rules, the amount of tax deducted at source, which is otherwise with the Department, cannot be allowed to remain with it and corresponding credit has to be granted to the person who has been subjected to tax in respect of such income'. The relevant finding of the Pune Bench of the Tribunal reads as follows:

*"4. We have heard both the sides and gone through the relevant material on record. It is undisputed that the assessee gifted certain amount to his wife, who, in turn, made deposits of such sum with State Bank of India. Total interest income of Rs.39.26 lakh enured in her hands, which included interest income of Rs.37,42,048/- earned from deposits made with the amount gifted by the assessee. Considering the provisions of section 64, the assessee suo motu included such interest income of Rs.37.42lakh in his total income and claimed credit for the proportionate tax deducted at source at Rs.2,80,656/-, which got denied by the authorities on the ground that the mandate of Rule 37BA was not fulfilled.*

*5. Section 199(1) of the Act, with the marginal note 'Credit for tax deducted', provides through sub-section (1) that the amount of tax deducted at source on the amount of income shall be treated as payment of tax on behalf of deductee. Sub-section (3) of section 199 is relevant for our purpose, whose material part states that:*

*'The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) ....'. Thus it is overt that sub-section (3) recognises that where the income on which tax was deducted at source in the hands of 'A', is actually chargeable to tax in the hands of 'B', credit for tax deducted at source on such income shall be allowed to 'B'. The relevant rule is 37BA with a caption "Credit for tax deducted at source for the purposes of section 199". Sub-rule (1) provides that credit for tax deducted at source shall be given to the person to whom payment has been made or credit has been given.*

*Sub-rule (2) is significant for our purpose, whose relevant part states as under :*

*' (2) (i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*

*Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).*

*(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*

*(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule - (1) and shall keep the declaration in his safe custody.*

6. *A careful perusal of sub-rule (2) indicates that where the income, on which tax has been deducted at source, is assessable in the hands of a person other than deductee, then credit for the proportionate tax deducted at source shall be given to such other person and not the deductee. The proviso to sub-rule (2) provides for deductee filing a declaration with the deductor giving particulars of the other person to whom credit is to be given. On receipt of such declaration, the deductor shall issue certificate for the deduction of tax at source in the name of such other person. The crux of section 199 read with Rule 37BA(2) is that if the income, on which tax has been deducted at source, is chargeable to tax in the hands of the recipient, then credit for such tax will be allowed to such recipient. If, however, the income is fully or partly chargeable to tax in the hands of some other person because of the operation of any provision, like section 64 in the extant case, the proportionate credit for tax deducted at source should be allowed to such other person who is chargeable to tax in respect of such income, notwithstanding the fact that he is not the recipient of income. It is with a view to regularise the allowing of credit for tax deducted*

*at source to the person other than recipient of income, that the proviso to Rule 37BA(2) has been enshrined necessitating the furnishing of particulars of such other person by the recipient for enabling the deductor to issue TDS certificate in the name of the other person. The proviso to Rule 37BA(2) is just a procedural aspect of giving effect to the mandate of section 199 for allowing credit to the other person in whose hands the income is chargeable to tax. The entire purpose of this exercise of allowing credit to the other person is to ensure that the benefit of tax deducted at source is availed once and that too, by the right person, who is chargeable to tax in respect of such income. It is just to streamline the procedure for giving effect to this intent and rule out the possibility of taking any inappropriate credit for the amount of tax deducted at source, firstly, by the recipient who is not chargeable to tax and secondly, by the person who is rightly chargeable to tax in respect of such income, that the procedural provision has been put in place in Rule 37BA(2). One needs to draw a line of distinction between substantive provision [section 199 read with Rule 37BA(2) without proviso] and the procedural provision [proviso to Rule 37BA(2)]. Non-compliance of a procedural provision, which is otherwise directory in nature, cannot disturb the writ of a substantive provision.*

*7. Adverting to the facts of the extant case, it is seen that out of total interest income credited to assessee's wife as per Form No.26AS amounting to Rs.39.26 lakh, she included interest from SBI in her total income to the extent of Rs.1,84,212/-. The assessee included the remaining interest of Rs.37.42 lakh in his income because of the applicability of section 64 of the Act. The assessee and his wife claimed proportionate tax credit, which totals up to Rs.2,94,474/-. This decipheres that the total interest income received by the assessee's wife got taxed partly in her own assessment and partly in the assessment of her husband, the assessee in question, as per the mandate of section 64. The benefit of TDS has also been claimed accordingly. Merely because the assessee's wife did not furnish declaration to the bank in terms of proviso to Rule 37BA(2), the amount of tax deducted at source, which is otherwise with the Department, cannot be allowed to remain with it eternally without allowing any corresponding credit to the person who has been subjected to tax in respect of such income. As the substantive provision of section 199 talks of granting credit for tax deducted at source to the other person, who is lawfully taxable in respect of such income, we are satisfied that the matching credit for tax deducted at source must also be allowed to him. In view of the fact that the tax of Rs.2,80,656/- has actually been deducted at source on the interest income of Rs.37.42 lakh, we hold that the credit for such TDS should be allowed to the assessee, who*

*has been subjected to tax in respect of such income. This ground is allowed.”*

10. The Co-ordinate Bench of Pune ITAT in the case of Anil Ratanlal Bohra Vs. ACIT (supra) has categorically held that declaration to proviso to Rule 37BA(2) of the Income Tax Rules, 1962, is not mandatory. Admittedly, since assessee has declared long term capital gains on sale of the impugned property, assessee firm ought to be entitled to credit of TDS. Though assessee firm has claimed that deductee has not claimed TDS credit, I am of the view that AO has to verify whether the deductee has claimed credit for the TDS. If the deductee has not claimed credit of the TDS made by the BMRC and if the assessee firm had declared long-term capital gains on sale of impugned property, necessary tax credit has to be granted to the person who had suffered the tax of long-term capital gains. For limited purpose of examining the aforesaid issues, the matter is restored to the files of the AO. It is ordered accordingly.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(GEORGE GEORGE K)**  
**Vice President**

Bangalore.

Dated: 28.10.2024.

/NS/\*

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent           |
| 3. DRP        | 4. CIT                  |
| 5. CIT(A)     | 6. DR, ITAT, Bangalore. |
| 7. Guard file |                         |

By order

Assistant Registrar,  
ITAT, Bangalore.