

**IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH,
MUMBAI**

**BEFORESHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3748/MUM/2024
(A.Y. 2021-22)**

LEC-TPL UJV 2 nd FLOOR, TRANSOCEAN HOUSE, ONE BOULEVARD LAKE BOULEVARD ROAD, POWAI, MUMBAI - 400076	v/s. बनाम	THE INCOME TAX OFFICER, WARD 41(1)(2), KAUTILYA BHAVAN, MUMBAI - 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABAL9668D		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Malay Kalavadia
Respondent by :	Shri Manoj Kumar Sinha (SR. DR.)

Date of Hearing	03.09.2024
Date of Pronouncement	07.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Additional/Joint Commissioner of Income-tax (A)-4 Kolkata [hereinafter referred to as “Addl. CIT(A)”] dated 30.05.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for assessment year [A.Y.] 2021-22.

2. The grounds of appeal taken by the assessee are as under:

Ground No. 1 : Grant of short credit of TDS to the extent of Rs. 22,63,023/-

“On the facts and circumstances of the case and in law, the ld. CIT (A) has erred in confirming the action of the Ld. AO in granting short credit of Tax Deducted at Source (“TDS”) to the Appellant i.e., TDS claimed in return of income (ITR) at Rs. 29,98,646/- whereas the credit of TDS granted in the order of the Ld. CIT (A) is Rs. 7,35,623/- resulting in short grant of TDS to the extent of Rs. 22,63,023. The Appellant prays that the Ld. AO to be directed to grant full credit of TDS as claimed by the Appellant in its ITR and as also reflected in the Form 26 AS.”

3. Brief facts of the case are that the assessee is a joint venture between Tata Projects Limited and Lauren Engineers & Constructors (LEC) which is engaged in the business of undertaking construction contracts. The assessee declared income of Rs. 54,89,480/- during the year under consideration and is assessable as an Association of Persons (AOP). The assessee claimed credit of TDS amounting to Rs. 29,98,646/-. However, vide intimation issued under section 143(1), the CPC granted credit of only Rs. 10,35,704/-. The details of TDS credit claimed by the assessee are as under:-

Particulars	Amount (Rs)
Brought forward credit of TDS relating to AY 2020-21	17,50,660
Credit as appearing in Form 26AS of AY 2021-22	12,47,986
Total	29,98,646

4. The B/f credit of TDS pertains to tax deducted at source on advance money received by the assessee from M/s. Hindustan Petroleum Corporation Limited (HPCL) for setting up an ethanol plant in India. HPCL raised a bid for setting up of bio-ethanol plant in Bhatinda, Punjab in 2017 in order to tackle the issue of paddy stubble burning. The assessee being the L1 bidder, was



awarded the project for which advance money of Rs 48,62,95,000/- was received from HPCL during FY 2019-20. From this advance money, TDS amounting to Rs. 97,25,900/- was deducted by the HPCL. The assessee began the initial work and offered a portion of this amount of advance received as income amounting to Rs. 3,41,57,493/- on Percentage of Completion Method in AY 2020-21. Further, corresponding credit of TDS was claimed in A.Y. 2020-21 amounting to Rs. 79,75,240/- and the balance of Rs. 17,50,660/- (97,25,900-79,75,240) was carried forward to be claimed in the subsequent assessment year i.e. AY 2021-22. Subsequently, due to technical issues, HPCL decided not to pursue the project and therefore, the same was cancelled as per mutual decision between the assessee and the HPCL. However, the HPCL agreed to pay the assessee for the work already undertaken. It was mutually discussed and decided that the assessee would be paid for the work amounting to Rs. 8,31,99,040/- on which TDS was also deducted. Since, the assessee had already offered income to the extent of Rs. 3,41,57,493/- in AY 2020-21, only balance amount of Rs. 4,90,42,547/- was offered in AY 2021-22. However, the amount of advance received by the assessee (including TDS deducted on it) was required to be refunded back to the HPCL by the assessee. Since, the HPCL did not wish to revise the TDS return, the assessee had to claim the credit for tax deduction of Rs. 97,25,900/-. Since, out of this amount, the



assessee had already claimed Rs. 79,75,240/- in the earlier assessment year i.e. AY 2020-21, the balance amount of Rs. 17,50,660/- has been claimed in the year under consideration alongwith TDS of Rs. 12,47,986/- deducted from Rs. 8,32,00,000/- received by the assessee as full and final amount for the work done till date.

5. Aggrieved with the order of the CPC, the assessee filed an appeal before Ld. Addl. CIT(A). The Ld. Addl. CIT(A) dismissed the assessee's appeal with the following observations: -

*“It is not clear that why the corresponding party has not furnished the Revised TDS Return if the corresponding transaction is not completed and the party has received the amount in full including TDS. Why the appellant has refunded the amount including the TDS? The Appellant should pursue the matter with that party and request them to file a revised TDS Return and refund the corresponding amount of TDS to the party. As stated earlier, as per Rule 37BA, the credit of such TDS of Rs 17,50,660/- cannot be given. The Appellant has mentioned some Circulars and decisions which are old and prior to insertion of Rule 37BA as above. Hence, this part of the Ground of Appeal is **DISMISSED.**”*

6. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us. We have heard the rival submissions and perused the material before us. Admittedly, TDS of Rs. 97,25,900/- was deducted from the advance given to the assessee by HPCL in the earlier AY. Out of this amount, credit of Rs. 79,75,240/- has already been claimed during AY 2020-21. As the contract stands terminated and the money has been refunded back, the assessee has no



other option but to claim the balance TDS of Rs. 17,50,660/- during the year under consideration. The Ld. AR has vehemently argued that HPCL has duly deducted and deposited the tax in the Government's account. Since, HPCL was not ready to revise its TDS return, they advised the assessee to claim the refund for TDS in its IT return. The assessee has, therefore, rightly claimed the balance TDS in the return filed for AY 2021-22. Ld. AR further placed reliance on the circular No. 5/2001 dated 02/03/2001 of the CBDT which deals with the issue of getting credit under Sec. 199 for rental income. As per this circular, credit for entire balance of TDS after termination / cancellation of such agreement has to be allowed to the assessee in the AY relevant to the financial year during which the agreement gets terminated/cancelled and balance of advance rent is refunded to the tenant. The facts of the assessee's case being similar to the situation enumerated in the aforesaid circular, the Ld. AR stressed that the benefit of this interpretation should be given to the assessee as well.

7. Reliance was also placed on the circular No. 7/2007, which enumerates the procedure of claiming refund of tax deducted under Sec. 195 in certain situations. The Ld. AR also relied upon the following judicial pronouncement related to the issue under consideration:



InCIT Vs M/S ELSAMEX-TWS-SNC-JV in ITA No. 819/2007 C/W

ITA No. 9/2009, Hon'ble High Court of Karnataka has decided the issue relating to the claim of tax deducted on mobilization advance. Relevant portion of order is reproduced below:-

“From the material on record, it is clear that the assessee is a contractor who has been paid a sum of Rs. 29,28,59,937/- as mobilization advance which is not an income. But by virtue of Section 194C, TDS of Rs. 59,12,958/- was deducted and credited to the account of the assessee in part. For the assessment year 2002-2003, the assessee has suffered loss. Consequently, there was no income. In the returns filed, the assessee sought for refund of the entire amount. The Assessing Authority treated the receipt of Rs. 7,32,14,128/- as income and granted a refund of Rs. 14,93,568/- out of the TDS amount. He declined to pay the balance amount on the ground that it is adjustable in the future years as and when the assessee offers to tax. If the amount of Rs. 29,98,50,937/- is a mobilisation advance and not an income at all, the question of paying income tax would not arise. When the gross receipts of Rs. 7,32,14,128/- is offered and in that assessment year he has suffered loss, the question of paying any tax on the said amount also does not arise. He has passed an order for refund of Rs. 14,93,568/- accepting the loss returns of the assessee. But he was in error in not refunding the balance amount on account on the ground that it is liable to be adjusted in future years. If Rs. 14,93,568/- was refundable as the assessee had no income for the assessment year 2002-2003, the balance amount could not have been retained when there was no income which is liable to tax at the hands of the assessee/ In fact the advance has been given after taking bank guarantees. It is here Section 237 of the Act comes into operation. As rightly held by the Tribunal, the said amount is also refundable. A conjoint reading of Sections 194C, 199 & 237 of the Act makes it clear that if there was no liability to pay tax, the TDS paid is liable to be refunded and that is absolutely what the Tribunal has stated. Therefore, we do not see any justification to interfere with the orders passed. Hence, the appeal filed by the revenue is liable to be dismissed.”



8. Further reliance was placed on the decision of the Hon'ble Coordinate Bench in **ITA No. 6708/Mum/2010** in the case of **M/s Arvind Murjani Pvt. Ltd. Vs ITO Mumbai**. Hon'ble co-ordinate bench while deciding the issue related to allowance of credit of TDS held as under:

“As the amount on which tax was deducted at source is not at all chargeable to tax, then the command of section 199 will have to harmoniously and pragmatically read as providing for allowing credit for the tax deducted at source in the year of the receipt of the amount, on which tax was deducted at source. If the view point canvassed by the Revenue is accepted and the assessee is not allowed credit for the tax deducted at source will remain in limbo. The Revenue will never be in position to allow credit for such tax because the amount is not chargeable to tax in the hands of the assessee and it cannot retain such amount with it in contravention of Article 265 of the Constitution of India. To circumvent such a situation, the only possible solution is to allow credit for the tax deducted at source to the payee of the amount in the year for which such tax was deducted and the amount was paid after deduction of tax at source.”

9. Ld. DR, on the other hand, strongly relied on the order of the lower authorities and pointed out that under Rule 37BA(3) the credit of TDS which is paid to the central government can only be given in the AY in which such income is assessable. Since, no income has been offered to tax corresponding to the amount of TDS being claimed by the assessee, the credit for TDS cannot be given to the assessee in the year under consideration.

10. After careful consideration of the facts and circumstances in the light of the judicial pronouncements as well as the circulars of the CBDT relating to



granting of refund of TDS, we are of the view that the assessee is entitled to claim refund on TDS deducted from the advance given to it by HPCL. The AO may however, verify from the system that no refund of the TDS in question has been claimed by the HPCL by way of filing of a revised TDS return. Subject to the above, the AO is directed to allow credit of brought-forward TDS as claimed by the assessee.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 07.11.2024

Sd/-

AMIT SHUKLA

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 07.11.2024

Lubhna Shaikh, Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,



Mumbai

5. गार्ड फाईल / Guard file.

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

