आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member &
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं /**ITA No.709/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Dy. CIT Central Circle Hyderabad	Vs.	M/s BI MINING (P) LTD Hyderabad PAN: AAGCB6685D
(Appellant)		(Respondent)
राजस्व द्वारा/Revenue by:	Shri K.N. Suresh Babu, DR	
निर्धारिती द्वारा/Assessee by:	Shri A.V. Raghuram, Advocate	
सुनवाई की तारीख/Date of hearing:	05/11/2024	
घोषणा की तारीख/Pronouncement:	26/11/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the Revenue is directed against the order dated 28/05/2024 of the learned CIT (A)-3, Visakhapatnam, relating to A.Y.2017-18.

2. The Revenue raised the following grounds:

"1. The order of the learned CIT (A) is erroneous both on the facts and in law.

2. Under the facts and circumstances, the learned CIT (A) has erred in directing the Assessing Officer to allow credit of TDS without appreciating the fact that, the claim of the assessee

is not in conformity with the provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962.

3. Under the facts and circumstances, the learned CIT (A) has failed to appreciate the fact that the assessee has claimed credit for TDS of Rs.3,15,30,612/- but the corresponding income attributable to TDS amount was not disclosed in the return of income filed for the A.Y 2017-18.

4. Any other ground that may be urged at the time of hearing".

3. The brief facts of the case are that, the appellant company filed its return of income for the A.Y 2017-18, on 31/10/2017 returning total loss of Rs.2,05,09,483/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the Act, on 31/12/2019 and determined the total income at Rs.4,87,24,729/- and tax refundable at Rs.2,23,19,902/- by allowing TDS credit of Rs.3,57,74,970/-. The assessee has filed appeal against the assessment order passed by the Assessing Officer u/s 143(3) of the Act, dated 31/12/2019 and during the pendency of appeal, the appellant preferred to avail the benefit of Direct Tax Vivad-se-Vishwas Scheme, 2020 and the PCIT Central, Visakhapatnam issued Form-3 determining the total tax payable at Rs.2,28,90,906/-. In Form–3, the appellant has claimed taxes paid of Rs.1,61,09,857/- out of refund claimed in the assessment made u/s 143(3) of the Act, on 31/12/2019. Further, the balance amount of Rs.67,81,049/- was paid on 31/05/2021. Thereafter, Form-5 has been issued on 23/12/2021. Subsequently, the CIT Central Circle, Tirupati passed an order on 21/04/2022 giving effect to Form-5 issued by

the PCIT Central, Visakhapatnam on 23/12/2021. In the order, the Dy.CIT, Central Circle did not give credit to the amount of Rs.67,81,049/- paid, as part of Vivad-se-Vishwas Scheme 2020. The appellant had filed an application u/s 154 of the I.T. Act, 1961 seeking credit of taxes paid as part of VSVS 2020. The Assessing Officer has passed an order u/s 154 dated 20/09/2023 and allowed TDS credit of Rs.42,44,358/- by holding that, as per provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962, the appellant is not eligible to claim credit for TDS, to an extent of Rs.3,15,30,612/- thereby raising a demand of Rs.1,86,456,548/-.

4. The appellant aggrieved by the said order passed by the Assessing Officer u/s 154 of the I.T. Act, 1961, has filed an appeal before the learned CIT (A). Before the learned CIT (A), the appellant submitted that it has received mobilization advance of Rs.157.65 crores on which TDS of Rs.3,15,30,612/- was deducted. Subsequently, the works allotted to the appellant for which mobilization advance given was cancelled. As per provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962, when the income is assessable over a number of years, credit for TDS shall be given to those years in the same proportion, in which the income is assessable to tax. Since the work awarded to the appellant has been cancelled and amount has been returned, the appellant has claimed TDS credit for the A.Y 2017-18, because there is no question of spreading income to subsequent A.Ys.

5. The learned CIT (A) after considering the relevant submissions of the assessee and also by following the decision of the ITAT Ahmedabad Benches in the case of Adani Vizhinjam Port Pvt. Ltd in ITA Nos.470 & 525/Ahd/2020 dated 234/02/2023, directed the Assessing Officer to allow TDS credit of Rs.3,57,74,970/-, duly reflected in Form 26AS of the appellant, for the A.Y 20917-18. The learned CIT (A) further held that, in the peculiar facts of the case, provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962 cannot be made applicable to the appellant. Further, on the contrary provisions of section 199 of the I.T. Act, 1961 comes to operation and support the stand taken by the appellant, as held by the ITAT Ahmedabad Benches in the case of Adani Vizhinjam Port Pvt. Ltd (Supra) and therefore, by following the decision of the ITAT Ahmedabad, has directed the Assessing Officer to allow credit of TDS of Rs.3,15,30,612/- as claimed by the assessee on TDS deducted, in respect of mobilization advance received and later cancelled and refunded by the appellant.

5. Being aggrieved by the order of the learned CIT (A), the revenue is in appeal before the Tribunal.

6. The learned DR submitted that, the learned CIT (A) erred in directing the Assessing Officer to allow credit of TDS of Rs.3,15,30,612/- without appreciating the fact that, the claim of the assessee is not in conformity with the provisions of Rule

37BA(3)(ii) of the Income Tax Rules, 1962. The learned DR further submitted that, the assessee has originally claimed TDS credit of Rs.3,57,74,970/-. The CPC issued defect notice u/s 139(9) on 1/6/2018, as the TDS has been claimed but, the corresponding income has not been offered to tax as per provisions of Rule 37BA(3)(ii) r.w.s. 199 of the Income Tax Rules, 1962. In response, the assessee submitted that it has received mobilization advance of Rs.157.65 crores, on which TDS was made by the deductor. Further, the mobilization advance has been refunded, because of cancellation of contract and thus, the appellant has claimed TDS for the A.Y 2017-18. Subsequently, the assessee filed rectified return on 28/06/2018 and restricted the TDS claim for Rs.41,72,967/- and the assessee carried forwarded TDS at Rs.3,15,30,612/- to subsequent A.Y. However, while completing the assessment, the credit for TDS has been allowed including the TDS credit of Rs.3,15,30,612/- not claimed by the assessee and carried forwarded to subsequent A.Y. Subsequently, order u/s 154 was passed on 20/09/2023 and restricted TDS credit of Rs.42,44,358/- as per provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962. The learned CIT (A) without appreciating the relevant facts, simply allowed TDS credit, even though the provisions of section 199 of the Act, r.w. Rule 37BA(3)(ii) of the Income Tax Rules, 1962, allows credit for TDS only in the year, in which income is offered to tax. Therefore, he submitted that the order of the learned CIT (A) should be set aside and the order

passed by the Assessing Officer u/s 154 of the Act, should be upheld.

7. The learned Counsel for the assessee submitted that, there is no dispute with regard to the fact that, the appellant has received mobilization advance of Rs.157.64 crores on which, TDS of Rs.3,15,30,612/- has been deducted and reported in Form 26AS of the appellant, for the A.Y 2017-18. It is also an admitted fact that, the works awarded to the appellant has been terminated and cancelled by M/s. BGR Mining and Infra Pvt Ltd, vide their letter dated 7/4/2018 and mobilization advance paid to the appellant has been recalled. Since the work has been cancelled and mobilization advance has been returned, net of TDS, the appellant has rightly claimed TDS credit available, as per Form 26AS for the A.Y under consideration, because there is no income to be offered on said contract, either for the A.Y in question, or for the subsequent A.Ys. The learned CIT (A) after considering the peculiar facts of the case, has rightly held that section 199 r.w. Rule 37BA(3)(ii) of the Income Tax Rules, 1962 is not applicable to the appellant and accordingly directed the Assessing Officer to allow TDS of Rs.3,15,30,612/-. Therefore, he submitted that there is no error in the reasons given by the learned CIT (A) and thus, their order should be upheld.

8. We have heard the rival contentions, perused the material available on record and gone through the orders of the

authorities below. The provisions of section 199 of the Act, deals with credit for taxes deducted and as per the said provisions, any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government, shall be treated as a payment of tax on behalf of the person from whose income, the deduction was made. Rule 37BA(3)(ii) of the Income Tax Rules, 1962, deals with the credit for tax deducted at source and paid to the Central Govt. and as per said rule credit for TDS shall be given for the A.Y for which such income is assessable. In the present case, the Assessing Officer referred to Rule 37BA(3)(ii) of the Income Tax Rules, 1962 and observed that where tax has been deducted at source and paid to the Central Govt. and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax. We find, there is no dispute with regard to the provisions of section 199 r.w Rule 37BA(3)(ii) of the Income Tax Rules, 1962, however, whether the said provision is applicable to the given facts of the present case are not is to be seen. Admittedly, the assessee has received mobilization advances of Rs.157.65 crores on which the TDS of Rs. 3,15,30,612/- has been deducted. The learned CIT (A) has recorded a categorical finding that the works allotted to the appellant for which mobilization advance has been paid was cancelled. Once the contract awarded to the appellant got cancelled and no income accrues to the assessee from the said contract, then the question of spreading the income over the years

does not arise and consequent Rule 37BA(3)(ii) cannot be applied to the assessee. Since the findings of the facts recorded by the learned CIT (A) that, works awarded to the appellant has been cancelled and mobilization advances received from the principal has been returned net of taxes, in our considered view, the assessee has rightly claimed credit for TDS deducted on said mobilization advance, because there is no income to be offered in the subsequent financial years. Therefore, we are of the considered view that there is no error in the reasons given by the learned CIT (A) to allow credit for the impugned A.Y and thus, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeal filed by the Revenue.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 26th November, 2024.

Sd/-	Sd/-
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 26th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Dy. CIT, Central Circle, 3rd Floor, Aayakar Bhavan, K.T. Road, Tirupati A.P 517501
2	BI MINING Pvt. Ltd 8-2-596/R, First Floor, Road No.10, Banjara Hills, Hyderabad 500034
3	Pr. CIT – Central, Tirupati
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order