

**IN THE INCOME TAX APPELLATE TRIBUNAL “H(SMC)” BENCH MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4319/MUM/2024  
Assessment Year: 2017-18**

NR Agrawal Co., 209 B Wing, 2 <sup>nd</sup> Floor, Crystal Plaza, New Link Road, Andheri (West), Mumbai – 400053  (PAN : AAEFN1711B)	Vs.	Income Tax Officer – 16(3)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri N. R. Agrawal, CA  
Revenue : Smt. Pravin Salunkhe, Sr. DR

Date of Hearing : 10.12.2024  
Date of Pronouncement : 18.12.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1065964602(1), dated 24.06.2024 passed against the rectification order by the Income Tax Officer, Ward 16(3)(1), Mumbai, u/s. 154 r.w.s. 143(1) of the Income-tax Act (hereinafter referred to as the “Act”), dated 27.06.2023 for Assessment Year 2017-18.

2. Grounds taken by the assessee are reproduced as under:

1). *The learned CIT (Appeals) erred in not allowing credit of TDS claimed Rs. 42,275/-*

2). *The learned CIT (Appeals) erred in not allowing credit of TDS claimed Rs. 15,970/- being TDS not deposited by clients (Out of Rs. 42,275/-)*

3. Brief facts of the case are that assessee is a Chartered accountant firm and follows cash system of accounting. Hence credit for TDS is claimed in the year of receipt of professional fees, while clients make provisions as on 31.3.2016 which is paid after audit is completed and bill are raised in Financial year 2016-17 (AY 2017-18). In the return filed by the assessee, TDS claimed is Rs.5,83,198/-. In the return processed by Central Processing Centre (CPC), Bengaluru of the Department u/s.143(1), credit for TDS was given for Rs.5,30,673/- . Subsequent to this, assessee applied for rectification of mistake in respect of short credit of TDS by making application u/s. 154 which was done three times and every time there was some incremental credit given to the assessee vide three different orders u/s. 154, dated 8.12.2018, 16.08.2021 and 22.02.2023. Accordingly, till the last leg of order u/s. 154, there is a balance TDS credit of Rs.42,275/- which remains to be given to the assessee as claimed by it in its return of income. This comprises of two component, first of Rs.26,305/- which has not been allowed despite reconciliation furnished vis-à-vis Form 26AS for the preceding and the current year on account of brought forward and carry forward of the credit and second of Rs.15,970/- which relates to TDS done by the payers but not deposited.

3.1. For the claim of the assessee, the detailed explanation for each of the TDS entry not allowed to the assessee is furnished as under:

Detailed explanation for each TDS (Not allowed) which is carried  
forward from Assessment Year 2016-17

<u>Name of deductor</u>	<u>TDS disallowed</u>	<u>Paper Book Page No.</u>	<u>Explanation</u>
Aapurti Finance Ltd	4008/-	Page no. 11	B/F Sr. no. 24 of 26 AS AY 2016/17
Randox Lab.	8,000/-	Page no. 21	B/F Sr. no. 37 of 26 AS AY <u>2017/18</u>
Gesture Securities	2519/-	Page no. 10	B/F Sr. no. 14 of 26 AS AY 2016/17
Tunnu Investment	2519/-	Page no. 11	B/F Sr. no. 44 of 26 AS AY 2016/17
Mehra Eyeteck P. Ltd.	3740/-	Page no. 12 Page no. 20	B/F 14300/-Sr. no. 28 of 26 AS AY 2016/17 & C/F 10560/-Sr. no. 27 of 26 AS <u>AY 2017/18</u>
Plaza Securities	2519/-	Page no. 13	B/F Sr. no. 36 of 26 AS AY 2016/17
Agarsha Enterprises	2500/-	Page no. 9	B/F Sr. no. 2 of 26 AS AY 2016/17
Mrunalini B Kotak	<u>500/-</u>	Page no. 20	Appearing in Sr no. 30 26-AS 17/18
	Total Rs. <u>26,305/-</u>		

**Detailed TDS not paid by clients**

Biax Electric	11,000/-	
Meghdoot Refrigeration	165/-	
P.K.Shah Shares Pvt. Ltd.	55/-	
Mrunalini B Kotak	<u>4750/-</u>	Total Rs. <u>15,970/-</u>
<b>Grand Total</b>	<b>42,275/-</b>	

3.2. In the impugned rectification order passed u/s. 154 r.w.s. 143(1) dated 27.06.2023, in para-3, ld. Assessing Officer has noted that on perusing of ITR, processing order and rectification order, it is found that out of total TDS claimed of Rs.5,83,198/-, amount of Rs.5,40,923/- is matched with the entries reflected in Form 26AS of the assessee, thereby allowing TDS credit of Rs.5,40,923/-. In para 5, he noted that total income of the assessee for Assessment Year 2017-18 remains unchanged.

3.3. Rectification order for Assessment Year 2016-17, dated 09.07.2021 is also placed on record wherein assessee had claimed credit of TDS of Rs.5,00,938/-. In the said order, ld. Assessing Officer

had noted that on verification of ITR, 26AS and TDS reconciliation filed by the assessee, credit of Rs.5,00,932/- is allowed. From this order, whereby TDS credit of Rs.5,00,938/- was allowed in Assessment Year 2016-17, i.e., immediately preceding assessment year, the reconciliation furnished by the assessee wherein claim of TDS of Rs.1,71,644/- was carried forward to Assessment Year 2017-18, i.e., the year under consideration draws significance to deal with the issue in the present appeal. Claim of TDS credit by the assessee in Assessment Year 2016-17 of Rs.5,00,938/- which has been accepted by the Department was arrived at after carry forward of TDS amounts totalling to Rs.1,71,644/- to Assessment Year 2017-18, details of which is extracted as under:

1-Apr-2016 to 31-Mar-2018					
Account	20AS	Books	B/F AY 16-18	C/F to AY 17-18	To be claimed
AGRAHAR ENTERPRISES	6,874.00	6,799.00	3,933.00	4,008.00	6,799.00
SJ Shah Trading Pvt Ltd	2,500.00	-	-	2,500.00	-
Amar Man Power Supply Sy	9,000.00	8,500.00	5,000.00	5,500.00	8,500.00
Biax	7,000.00	3,500.00	-	3,500.00	3,500.00
Chandulal Surajmal	12,293.00	11,775.00	9,500.00	8,000.00	13,793.00
DR. GOPAL HEALTH PVT	7,377.00	7,377.00	-	-	7,377.00
Gopal Kewalramani	8,563.00	7,852.00	-	-	8,563.00
Eltech Engineers Pvt Ltd.	-	2,394.00	-	-	-
Engineering Sabha	3,124.00	3,124.00	-	-	3,124.00
Akbar Abdul Ali	2,290.00	7,420.00	-	-	7,420.00
Free Trade	22,000.00	22,000.00	8,000.00	8,000.00	22,000.00
Genesis Trading	23,979.00	23,979.00	-	-	23,979.00
Gennex Cresa	2,673.00	2,673.00	-	-	2,673.00
Gesture Securities	4,000.00	4,000.00	-	-	4,000.00
G.L. Construction	5,027.00	2,508.00	2,247.00	2,519.00	4,755.00
G.Shoe Exports	38,074.00	39,186.00	10,112.00	9,000.00	39,186.00
Headway Capital	6,500.00	7,500.00	5,000.00	4,000.00	7,500.00
Jayee Real Estate	3,371.00	3,371.00	-	-	3,371.00
LEUKOWITZ CHEMICALS	4,300.00	2,500.00	-	1,800.00	2,500.00
LEGEND HOSPITALITY & I	4,065.00	3,990.00	3,933.00	4,008.00	3,990.00
Lovely Hotels P.Ltd.	337.00	3,337.00	3,750.00	-	4,087.00
Manasalu Properties P. Ltd.	5,700.00	3,100.00	-	2,600.00	3,100.00
Man Power Supply System	9,764.00	4,264.00	-	5,500.00	4,264.00
Man Power Support System	7,000.00	3,500.00	-	3,500.00	3,500.00
Meghdoot Refrigeration P.Lt	7,000.00	3,500.00	-	3,500.00	3,500.00
Meghdoot Services Pvt Ltd.	13,065.00	8,065.00	-	5,000.00	8,065.00
Mehra Eyetech P. Ltd.	-	1,775.00	-	-	-
Mode Export P. Ltd	18,300.00	13,100.00	9,100.00	14,300.00	13,100.00
Mulla Associates	8,016.00	7,919.00	5,056.00	-	13,072.00
Mulla Hygiene	6,000.00	6,000.00	-	-	6,000.00
Mulla Personal Services	-	4,000.00	-	-	-
Mumbai Mazdoor Sabha	3,500.00	3,500.00	-	-	3,500.00
Nath Industrial Ltd.	5,130.00	5,130.00	-	-	5,130.00
Novell Construction Pvt.Ltd.	6,500.00	6,500.00	4,500.00	4,500.00	6,500.00
Oxford Chemicals	2,809.00	2,809.00	-	-	2,809.00
PINKHEM INVESTMENTS	4,065.00	3,990.00	3,933.00	4,008.00	3,990.00
P.K.Shah Shares Pvt. Ltd.	16,667.00	16,443.00	8,427.00	-	25,094.00
Plaza Securities	29,175.00	29,180.00	11,236.00	10,305.00	30,106.00
Prakash Shah	5,027.00	2,508.00	2,247.00	2,519.00	4,755.00
Panjab & Sindh Bank	10,779.00	10,779.00	-	-	10,779.00
Rama Pulp Ltd.	-	55,200.00	55,200.00	-	55,200.00
Randox Laboratoria Pvt Ltd	13,500.00	13,500.00	12,500.00	12,500.00	13,500.00
Randox Laboratoria Pvt Ltd	30,534.00	30,534.00	-	-	30,534.00
Samwad Video P.Ltd.	13,740.00	13,740.00	-	-	13,740.00
Sprite Investment	4,160.00	4,160.00	-	-	4,160.00
State Bank	7,000.00	7,750.00	3,050.00	2,000.00	8,050.00
Syndicate Bank	10,000.00	10,000.00	-	-	10,000.00
Topaz	3,000.00	3,000.00	-	-	3,000.00
Tristar Oceanic Services Pv	4,065.00	3,990.00	3,933.00	4,008.00	3,990.00
Tunnu Investment	13,000.00	12,000.00	6,000.00	7,000.00	12,000.00
United India Assurance	7,890.00	5,371.00	2,247.00	2,519.00	7,618.00
Veer Marine Pvt.Ltd.	-	7,120.00	7,120.00	-	7,120.00
PICO Capital Pvt Ltd.(Veer)	3,664.00	3,664.00	-	-	3,664.00
Western India Garments	7,743.00	7,379.00	3,371.00	3,735.00	7,379.00
Yasham P2D Life Science	9,733.00	9,583.00	7,865.00	8,015.00	9,583.00
Yasham Speciality	3,300.00	-	-	3,300.00	-
	28,100.00	8,100.00	-	20,000.00	8,100.00
	<b>491,273.00</b>	<b>504,938.00</b>	<b>197,260.00</b>	<b>171,644.00</b>	<b>522,019.00</b>
				<b>Claimed in return</b>	<b>500938/-</b>

3.4. Assessee furnished similar reconciliation of TDS credit claimed in Assessment Year 2017-18 of Rs.5,83,198/- by taking into account TDS credit brought forward from Assessment Year 2016-17 and carry

forward of certain TDS credits to Assessment Year 2018-19. The amount of brought forward TDS credit for Assessment Year 2016-17 in this reconciliation is same i.e. Rs.1,71,644/-, as noted in the reconciliation statement for Assessment Year 2016-17, extracted above. TDS reconciliation statement for Assessment Year 2017-18 is extracted below:

1-Apr-2016 to 31-Mar-2017

	26AS	Books	B/F AY 16-17	C/F to AY 18-19	To be claimed	TDS Not paid
Aapuri Finance Ltd	0 00	4008 00	4008 00			
AGRASHA ENTERPRISES	1500 00	4000.00	2500 00		4,008.00	-
SJ Shah Trading Pvt Ltd (Agarsha Alloy)	7500 00	6500 00	5500 00	6500 00	4,000.00	-
Amar Man Power Supply System	7300 00	4800.00	3500 00	4800 00	6,500.00	-
Biax	0 00	11000 00	8000 00		6,000.00	(1,200.00)
BANER BIZ BAY	12500 00		0 00	12500 00	8,000.00	1,000.00
Chandul Surajmal	2290 00	2290.00	0 00		-	-
COLOR IMAGE	4580 00	4580 00	0 00		2,290.00	-
Eltech Engineers Pvt Ltd.	4300 00	4300 00	0 00		4,580.00	-
Engineering Sabha	14375 00	14375.00	0 00		4,300.00	-
ENGINEER AMIRALI AKBARALI	3450 00	3450 00	0 00		14,375.00	-
Akbar Abdul Ali	25000 00	25000 00	8000.00	8000 00	3,450.00	-
Free Trade	2865 00	2865 00	0 00		25,000.00	-
FLORAL DECK PLAZA PREMISES CO	2000 00	2000 00	0 00		2,865.00	-
Genesis Trading	22595 00	22595.00	0 00		2,000.00	-
Gesture Securities	2500 00	5019 00	2519 00		22,595.00	-
GEETA PRAKASH SHAH	2863 00	2863 00	0 00		5,019.00	-
G L Construction	56800 00	56800 00	9000 00	9000 00	2,863.00	-
GLOBEX PREMIUM HOLIDAYS LIMITE	12296 00	12296 00	0 00		56,800.00	-
GLOBE COTYARN PVT LTD	8000 00	8000 00	0 00		12,296.00	-
G Shoe Exports	23500 00	22500 00	4000 00	5000 00	8,000.00	-
Jayee Real Estate	5550 00	5550 00	1800 00	1800 00	22,500.00	-
LEUKOWITCH CHEMICALS PRIVATE	5175 00	4008 00	4008 00	5175 00	5,550.00	-
Lovely Hotels P Ltd	7250 00	4350 00	2600 00	5500 00	4,008.00	-
Manasalu Properties P. Ltd.	7600 00	6550 00	5500 00	6550 00	4,350.00	-
Man Power Supply System	4750 00	4300 00	3500 00	3950 00	6,550.00	-
Man Power Support System	4750 00	4300 00	3500 00	3950 00	4,300.00	-
Meghdoot Refrigeration P Ltd.	7500 00	7665 00	5000 00	5000 00	4,300.00	-
Mehra Eyeteck P. Ltd.	14560 00	18300 00	14300 00	10560 00	7,500.00	165.00
Mode Export P. Ltd					18,300.00	-
Mulla Associates	9300 00	9300 00			-	-
Mulla Personal Services	4300 00	4300 00			9,300.00	-
Mumbai Mazdoor Sabha	32200 00	32200 00			4,300.00	-
MRUNALINI B. KOTAK SERVICES PRI	500 00	5750 00			32,200.00	-
Nath Industrial Ltd.	9500 00	8000 00	4500 00	6000 00	500.00	5,250.00
Oxford Chemicals	5175 00	4008 00	4008 00	5175 00	8,000.00	-
P.K.Shah Shares Pvt. Ltd.	24750 00	24805 00	10305 00	10250 00	4,008.00	-
Plaza Securities	7863 00	10382 00	2519 00		24,805.00	-
Prakash Shah	9000 00	9000 00			10,382.00	-
PRISTINE ENGINEERING SERVICES I	4000 00	4000 00			9,000.00	-
PLUTO BUILDERS LLP	4500 00	0 00		4500 00	4,000.00	-
Rama Pulp Ltd.	28,500 00	27,000 00	12,500 00	14,000 00	-	-
Randox	8,000 00	8,000 00			27,000.00	-
Samwad Video P Ltd.	7,660 00	7,660 00			8,000.00	-
Sprite Investment	6,900 00	6,400 00	2,000 00	2,500 00	7,660.00	-
State Bank	46,500 00	46,500 00			6,400.00	-
Syndicate Bank	18,905 00	18,905 00			46,500.00	-
SYNDICATE BANK, CORPORATE OFF	805 00	805 00			18,905.00	-
THE NEW INDIA ASSURANCE CO LTC	13,945 00	6,441 00		7,504 00	805.00	-
Topaz	5,175 00	4,008 00	4,008 00	5,175 00	6,441.00	-
TRANS GLOBAL	5,750 00	5,750 00			4,008.00	-
Tristar Oceanic Services Pvt. Ltd.	13,000 00	10,000 00	7,000 00	10,000 00	5,750.00	-
Tunnu Investment	6,500 00	9,019 00	2,519 00		10,000.00	-
VALSON INDUSTRIES LTD	8,625 00				9,019.00	-
Veer Marine Pvt.Ltd.	6,850 00	3,550 00		8,625 00	-	-
Rameshwarlal Verma	9,201 00	9,201 00		3,300 00	3,550.00	-
PICO Capital Pvt Ltd.(Veer Mercantile)			3,735 00		9,201.00	-
Western India Garments			8,015 00		3,735.00	(1,735.00)
Yasham P2D Life Science	4,450 00	4,450 00	3,300 00	2,500 00	8,015.00	(8,015.00)
Yasham Speciality	29,500 00	29,500 00	20,000 00	20,000 00	5,250.00	(800.00)
	604,703 00	583,198 00	171,644 00	187,814 00	588,533 00	(5,335 00)

3.5. Thus, from the above reconciliation statements, assessee demonstrated that owing to cash system of accounting followed by it, it has carried forward the credit of TDS to the subsequent year both in

Assessment Year 2016-17 and in Assessment Year 2017-18, for which the entries were reflected in Form 26AS, either for Assessment Year 2016-17 or for Assessment Year 2017-18. From the detailed explanation given by the assessee, as already noted for Rs. 26,305/- all the corresponding TDS entries have been mapped to the entries reflected in Form 26AS for Assessment Year 2016-17 and 2017-18. These forms are placed in the Paper Book which have been perused.

3.6. Ld. CIT(A), while disposing the appeal of the assessee noted in respect of claim of credit of Rs. 26,805/- that assessee has not claimed any brought forward of TDS and also that no TDS was carried forward. In this respect, reference was made to “schedule 15B1-TDS1: details of tax deducted at source from income (as per Form 16A issued by deductors)” forming part of the return filed by the assessee on 20.03.2020, pursuant to rectification application filed u/s. 154 for Assessment Year 2017-18 wherein details of unclaimed TDS brought forward was furnished amounting to Rs.1,71,644/-. The same is placed in the paper book at page 31 to 36. It was thus, claimed that the observation made by ld. CIT(A) is factually incorrect.

4. In respect of TDS credit of Rs.26,805/-, we have perused the material placed on record as discussed above, part of which have been extracted for ease of reference. We also take note of the fact that assessee has mapped each of the item of TDS credit not allowed to the assessee with the entries reflected in Form 26AS for Assessment Year 2016-17 and 2017-18. We note that there have been three iterations of rectification orders passed u/s.154, every time giving incremental credit for TDS claim by the assessee despite having reconciled each of the entries of TDS and the corresponding income offered by the assessee in its return. For the remaining amount of Rs.26,805/-,

remitting the matter back to the file of ld. Assessing Officer for verification would tantamount to waste of resources at all ends making the entire pursuit of the assessee futile. Having considered the verifiable material and being satisfied by the claim of the assessee, we allow the same and accordingly direct, the ld. Jurisdictional Assessing Officer(JAO) to give credit to the assessee, for the pending amount of Rs. 26,805/- as dealt herein with. Accordingly, ground no.1 taken by the assessee is allowed.

5. In respect of the remaining amount of Rs.15,970/- being TDS not deposited by the clients for which credit has not been given to the assessee, it is noted that, broadly the amount relates to two parties, i.e. Biax Electric – Rs.11,000/- and Mrunalini B Kotak for Rs.4750/-. In respect of these two parties, assessee pointed out from its bank statements that, it has received the amounts from the said clients, net of TDS. To substantiate the same, assessee has furnished copies of invoices raised on these two clients. Assessee has also furnished copies of receipt voucher in respect of professional fees received from these two clients accounted in the year under consideration. Assessee has offered the corresponding income in its return in respect of this TDS deducted by the clients but not deposited by them and hence not reflected in Form 26AS of the assessee. It is a case, where income has already been offered by the assessee and subjected to tax. In respect of tax liability on such income, there is a TDS done by the payer and who is at fault of not depositing the same, for which assessee cannot be held to be liable to pay such tax arrears. Asking assessee to pay such tax arrears by not giving credit for TDS already done by the payer leads to double jeopardy at the end of the assessee. One, it has not received the full value of invoice raised by it since part of it has been withheld by the payer towards TDS. Second, on claiming credit of TDS

done by the payer under a bonafide belief that the same would have been deposited by the payer in accordance with the provisions of law and not giving credit, since the payer has defaulted/not deposited the withheld amount, because of which the said amount is not reflected in Form 26AS of the assessee. This either leads to a demand at the end of the assessee or reduces the refund claimed by it. Section 205 puts a bar on direct demand against the assessee in such cases and demand on account of such tax credit mismatch cannot be enforced against the assessee.

5.1. To buttress this, we find force from the decision of Hon'ble High Court of Gujarat in the case of *Milan Arvindbhai Patel vs. ACIT (2023) 455 ITR 82 (Guj)*, for which the head note reads as under:

*“TDS-Credit for TDS-System of IT Department is not allowing any credit of tax deducted at source (TDS) for the assessment year in question-According to Revenue the online credit of tax deducted at source (TDS) claims for these years is not possible due to the reasons that credit of tax deducted at source (TDS) is not shown by e-TDS data because of the system of the IT Department-Board issued the direction to the field officer that in case an assessee whose tax has been deducted at source but is not deposited to the Government's account by the deductor, the assessee shall not be called upon to pay the demand to the extent tax has been deducted from his Income-It was also specified that s. 205 puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch in such situations cannot be enforced effectively-Thus, the Department shall not be denying the benefit of tax deducted at source by the employer during the relevant financial years to the petitioner-Credit of the tax shall be given to the petitioner and if in the interregnum, any recovery or adjustment is made by the Department, the petitioner shall be entitled to the refund, with the statutory interest, within eight weeks from the date of receipt of a copy of this order”*

5.2. Similar view was taken by Hon'ble High Court of Delhi in the case of *Incredible Unique Buildcom (P) Ltd. vs. ITO (2024) 337 CTR 129 (Delhi)*.

5.3. It is noted that relevant provisions are contained in the Act for taking appropriate actions against the assessee who are at default in complying with the TDS provisions, for which instant assessee cannot be made to suffer.

6. Accordingly, we allow the claim of the assessee for TDS credit in respect of these two parties amounting to Rs. 15,750/-. Ld. Assessing Officer is accordingly directed to give credit for the said amount. Ground No.02 is thus, partly allowed.

7. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 18 December, 2024

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 18 December, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai