

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.5759/Mum/2024
(Assessment Year: 2022-23)

Shri Rajeev Kumar Jain 301, Vivendi Building, Santacruz (West) S.O., Mumbai-400 054 PAN : ACOPJ0782E	vs	Income-tax Officer Circle 42(3)(1), Mumbai, Kautilya Bhavan, BKC Mumbai-400 051
APPLICANT		RESPONDENT

Assessee by : ShriRahul Kanojia
Respondent by : Shri Balasaheb Nagwe (SR DR)

Date of hearing : 26/12/2024
Date of pronouncement : 30/12/2024

ORDER

PER ANIKESH BANERJEE, JM:

Instant appeal of the assessee was filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act'), date of order 17/01/2024 for A.Y. 2022-23. The impugned order was emanated from the

order of the CPC, Bengaluru, passed under section 154 of the Act, date of order 10/07/2023.

2. The appeal was filed with delay of 219 days. The assessee filed the condonation petition and explained the delay. The Ld. DR had not made any specific objection. Accordingly, the delay for 219 days is condoned.

3. The appeal has been filed by the assessee challenging the denial of credit for Tax Deducted at Source (TDS) pertaining to his spouse. The assessee contends that since the income of the spouse, amounting to Rs. 46,76,589/-, was clubbed with his own income and duly declared in the Return of Income (ROI) for the relevant assessment year, the corresponding TDS of Rs. 3,67,969/-, reflected in Form 26AS of the spouse, ought to have been credited to the assessee's account. During the processing of the assessee's return under Section 143(1) of the Act, the TDS amount was not credited in the hands of the assessee. Consequently, the assessee filed a petition under Section 154 of the Act, seeking rectification of the intimation issued under Section 143(1). However, the Ld. AO rejected the petition.

Subsequently, the assessee preferred an appeal before the Ld. CIT(A). Upon consideration, the Ld. CIT(A) upheld the assessee's contention but directed the Ld. Assessing Officer to allow the TDS credit in the hands of the spouse. The relevant extract from the appeal order is reproduced below:

"7. Finding on Ground of Appeal No. 1 to 5

It is apparent from the record that no speaking order was passed against facts submitted by appellant. Appellant has clubbed income of the spouse u/s 69 of I.T. Act. Also he has reported the tax credit of his wife under rule 37 BA(2). It is reported that assessee's wife did not take credit of the amount which is matter of

dispute. Identical facts are decided by Hon'ble ITAT Pune in the case of Anil Ratal Bohora vs ACIT which is relied by appellant. Hon'ble ITAT in para 7 have held as under:

"Adverting to the fact 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 deciphers 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 37 BA(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."

Respectfully following the decision, appeal of the assessee is allowed. AO is directed to give credit to his wife and accordingly interest calculation u/s 234 of I.T. Act may be rectified.”

4. The Learned Authorized Representative (Ld. AR) contended that since the income was declared in the hands of the husband, the principle of matching requires that the corresponding TDS should also be credited to the same individual. In our considered view, the Ld. CIT(A) appropriately recognized this principle and correctly applied the matching concept with respect to the income of Rs. 36,76,589/- and the related TDS of Rs. 3,67,969/- by following the order of the coordinate bench of ITAT Pune in the case of **Anil Ratanlal Bohora vs. ACIT, 148 taxmann.com 15 (Pune-Trib)**.

5. The Ld. AR further presented the ROI filed by the husband, wherein the income of the spouse is duly declared, as evidenced in **APB page 52**. Upon reviewing Section 199 of the Act, it is evident that the grant of TDS credit must align with the declared income. Conversely, the Learned Departmental Representative (Ld. DR) relied on the order of the Ld. AO and argued against this position.

While we uphold the appeal order in principle, we find that the ultimate direction by the Ld. CIT(A) to credit the TDS amount in the hands of the spouse is unwarranted and unjustified. Accordingly, the TDS amount of Rs. 3,67,969/- shall be credited to the hands of the assessee, who has declared the income in their return. Consequently, the appeal filed by the assessee is allowed.

6. In the result, the appeal of the assessee bearing **ITA No. 5759/Mum/2024** is allowed.

Order pronounced in the open court on 30th day of December, 2024.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 30/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai