

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.2039/MUM/2025
(A.Y. 2016-17)**

Mr Harish Subbaya Shetty, 301, Sagar CHS, Sector – 9, Airoli, NaviMumbai – 400708, Maharashtra	v/s. बनाम	Income Tax Officer, Circle – 2(1)(1), Tower No. 6, Vashi Railway station, Commercial complex, Vashi, Navi Mumbai – 400703, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: BLFPS6182J		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri M. Subramanian, AR
Respondent by :	Shri Hemanshu Joshi (Sr. DR)

Date of Hearing	17.07.2025
Date of Pronouncement	23.07.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to rectification order passed u/s. 154 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 10.06.2024 for the Assessment Year [A.Y.] 2016-17.



2. The grounds of appeal are as under:

(1) *The Commissioner of Income Tax (Appeal) NFAC has erred in Law in by passing an unambiguous Order for Credit of TDS of Rs. 1,65,000/- which is totally unjustified and Arbitrary.*

(2) *On the Facts and Circumstances of the Case, The Commissioner of Income Tax (Appeal), NFAC mentioned following in Appeal order*

“In this regard, the appellant has claimed TDS of RS. 1,65,000/- in the return of income for the A.Y. 2016-17, however, the TDS amount is not reflected in Form 26AS for the A.Y. 2016-17, therefore, the TDS credit was not allowed in the A.Y. 2016-17. The TDS amount of Rs. 1,65,000/- is reflected in Form 26 AS for A.Y. 2017-18. I have considered the issue and found that the appellant has genuine claim of TDS which have been deducted by the deductors. It is not the fault of the appellant for not submitting TDS returns by the deductors timely. If the TDS have been deducted from the income of the appellant and the same is deposited in the government account by the deductors, the appellant has valid ground to claim those TDS. In view of these facts, the AO is directed to verify the genuineness of claim of TDS by the appellant and, whether the TDS claimed by the appellant was genuinely deducted and deposited in government account by the deductors. Further, the AO is also directed to verify whether the corresponding Long term capital gain on sale of flat and shop by the appellant during A.Y. 2016-17 have been declared in the return of income correctly. If yes, the credit of TDS amount of Rs. 1,65.000/- may be given in A.Y.2017-18 as reflected in Form 26 AS and the demand raised in A.Y. 2016-17 may be adjusted against the refund arised in A.Y. 2017-18 Alternatively, the TDS returns for financial year 2015-16 and 2016-17 may be rectified to reflect the TDS amount correctly in A.Y. 2016-17. AO should further ensure that no TDS credit be given in both the A.Ys. Thus, these grounds of appeal are partly allowed.”

The Appellant has Shown Income Correctly in A.Y.2016-17 & Claimed TDS of Rs. 1,65,000/- correctly in A.Y.2016-17 & also has not claimed TDS in A.Y.2017-18 & The Commissioner of Appeal, NFAC also informed to allow



TDS Credit after verification to Assessing officer but in Order it is mentioned that “the TDS returns for financial year 2015-16 and 2016-17 may be rectified to reflect the TDS amount correctly in A.Y. 2016-17” the TDS Return correction is not in the hand of Appellant it has to be rectified by Deductor (Buyer) & The Appellant is eligible for TDS Credit of Rs. 1,65,000/- in the A.Y.2016-17. The Commissioner of Appeal, NFAC has Partly allowed Appeal for TDS Credit of Rs. 1,65,000/-. The Commissioner of Appeal, NEAC has issued the unambiguous Order which is most unjustified and Arbitrary.

3. Brief facts of the case are that the assessee claimed TDS credit of Rs. 1,65,000/- in the return of income for the AY 2016-17 which was initially disallowed by the CPC while processing the return u/s 143(1) of the Act. Subsequent rectification application u/s 154 of the Act filed by the assessee before it, was also rejected against which the assessee preferred appeal before the first appellate authority. The instant appeal is filed against the impugned appellate order.

3.1 In this case, the assessee sold certain immovable properties during the FY 2015-16 and the resultant Long Term Capital Gain was disclosed in AY 2016-17. However, the TDS made by the buyers were reflected in Form 26AS for AY 2017-18. Therefore, TDS credit was not allowed by the CPC. The Id.CIT(A) opined that the assessee had genuine claim of TDS which had been deducted by the deductors. It is not the fault of the assessee for not submitting TDS returns by the deductors timely. If the TDS have been deducted from the income of the appellant



and the same is deposited in the government account by the deductors, it has valid ground to claim those TDS. In view of these facts, the AO was directed to verify the genuineness of claim of TDS by the appellant and, whether the TDS claimed was genuinely deducted and deposited in government account by the deductors. Accordingly, the AO was also directed to verify whether the corresponding Long term capital gain on sale of flat and shop by the appellant during A.Y. 2016-17 had been declared in the return of income correctly or not? If yes, the credit of TDS amount of Rs. 1,65,000/- may be given in A.Y. 2017-18 as reflected in Form 26AS and the demand raised in A.Y. 2016-17 may be adjusted against the refund arose in A.Y. 2017-18. Alternatively, the TDS returns for FYs 2015-16 and 2016-17 may be rectified to reflect the TDS amount correctly in A.Y. 2016-17. The AO should further ensure that no TDS credit be given in both the assessment years.

4. Before us, the ld.AR has argued that the directions given by the ld.CIT(A) are ambiguous and confusing in as much as the AO is not empowered to make any modification/rectification in the TDS returns which could be done by the deducting authority only. It is submitted that the claim of TDS is required to be given in the AY 2016-17 in which corresponding income has been declared in terms of section 199 of the Act. Directions given by the ld.CIT(A) are neither in accordance with the



provisions of law nor practicable as the assessee cannot rectify TDS returns. In this regard, reliance has been placed on coordinate bench decisions in the case of **Shivganga Drillers P.Ltd 139 Taxmann.538(ITAT-Indore) and Ignitive Digitech P.Ltd 154 taxmann.com 664(ITAT-Mumbai)**.The ld.DR relied on the orders of authorities below.

5. We have duly considered the facts of the case. It is apparent that the only dispute is TDS credit and the year in which to be given credit since the relevant income and TDS deducted pertain to two separate assessment years. It appears that the ld.CIT(A) has restored the entire issue to the file of the AO and has directed to allow the credit in AY 2017-18 wherein it is reflected in Form 26AS even though the impugned income has been disclosed by the assessee in AY 2016-17.

5.1 We have considered the rival arguments, perused the material available on record and gone through the orders of the authorities below. As per provisions of [section 199](#) of the Act r.w.rule 37BA(3)(i), credit for TDS should be allowed in the assessment year in which such income is assessable to tax. The assessee's claims that the income pertaining to amount of TDS has been offered to tax for the A.Y 2016-17 is in accordance with the provisions of the Act. We find that the



decisions relied upon by the assessee of the coordinate benches (supra) squarely apply to the facts of the case as well. We do not find any merits in the appellate order. We further find that there is no specific discussion on relevant provisions of the Act in the appellate order, but the fact remains that when the assessee makes a claim, that should be addressed with proper reasonings. Accordingly, we set aside the appellate order.

5.2 We are of the considered opinion that if the assessee claim is correct that income relating to said TDS is assessed for the A.Y 2016-17, then credit should be allowed for A.Y 2016-17 itself even if the said credit appeared in Form 26AS for the subsequent or earlier assessment years. We further hold that the facts need to be verified and therefore, the entire issue is set aside to the file of the AO and directing him to reconsider the issue of credit for TDS in the light of the above mentioned provisions of law and also in view of the evidences that may be filed by the assessee including necessary reconciliation and allow the credit for TDS in the assessment year in which such income is assessable/ assessed to tax. As regards, the alternative directions for getting the TDS returns rectified, we do not find any reason for the AO to get it done once the preceding direction is duly complied with by him.



6. In the result, the appeal being infructuous is hereby **allowed for statistical purposes.**

Order pronounced in the open court on **23.07.2025.**

Sd/-

SAKTIJIT DEY

(उपाध्यक्ष/ VICE PRESIDENT)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 23.07.2025

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.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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

