

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4979/Mum/2025**  
**(Assessment Year : 2018-19)**

**Chenthanmara KP Nair,**

G-103 Ekta Bhoomi Garden 1 & H  
Co-Op. HSG Soc. Ltd., Datta Pada Road,  
Borivali (East), Mumbai  
Mumbai - 400066

..... Appellant

v/s

**Deputy Commissioner of Income Tax -  
42(2)(1),**

C41-43, G Block BKC, Gilban Area,  
Bandra Kurla Complex, Bandra East,  
Mumbai - 400051  
PAN : ACRPN1974B

..... Respondent

Assessee by : Shri Uday P. Shah

Revenue by : Shri Vikas Chandra, Sr.DR

Date of Hearing - 23/09/2025

Date of Order - 26/09/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The Assessee has filed the present appeal against the impugned order dated 10.07.2025, passed under section 250 of the Income-tax Act, 1961 (*"the Act"*) by the learned Additional / Joint Commissioner of Income Tax (Appeals)-4, Kolkata, [*"learned Additional / Joint CIT(A)"*], for the assessment year 2018-19.

2. In this appeal, the Assessee has raised the following grounds: -

*"1 The learned Commissioner of Income Tax (Appeals) has committed an error in law and on facts by failing to direct the Assessing Officer to allow credit for Tax Deducted at Source (TDS), notwithstanding the deductor's failure to remit the same to the Government Treasury, thereby disregarding the binding precedent established by the Hon'ble High Court of Bombay in the case of Tata Communications Limited vs. Assistant Commissioner of Income Tax reported in Income Tax Appeal No. 1745/1746 of 2016."*

3. The only grievance of the assessee is against the non-granting of credit for the TDS deducted on the salary income.

4. The brief facts of the case are that the assessee is an individual and was working as General Manager - Marketing in M/s. Unimark Remedies Limited. For the year under consideration, the assessee filed its return of income on 28.07.2018, declaring a total income of Rs.17,14,460/-. During the year, the assessee declared salary income to the tune of Rs.21,20,760/- and claimed credit of TDS of Rs.3,44,989/- deducted from his salary income by M/s. Unimark Remedies Limited. The return filed by the assessee was processed vide intimation dated 12.02.2019 issued under section 143(1) of the Act by the AO-CPC accepting the return of income declared by the assessee. However, the AO-CPC did not grant the credit of TDS amounting to Rs.3,44,989/- on the assessee's salary income. The learned Additional / Joint CIT(A), vide impugned order, after taking into consideration the fact that though the TDS was deducted by the employer, but the employer failed to deposit the same to the Government Treasury, following the instructions issued by the CBDT, directed the AO to not enforce the demand collected as per the provisions of section 205 of the Act. Being aggrieved by the non-granting of TDS credit in relation to the salary income, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR submitted that the assessee received a salary amounting to Rs.21,41,116/- from his employer, namely M/s. Unimark Remedies Limited. It was further submitted that on the said salary income, the employer deducted TDS amounting to Rs.3,44,989/-. In this regard, the learned AR referred to the manual salary certificate (Form 16) issued by the employer, which forms part of the paper book at pages 9 to 11. The learned AR submitted that the employer did not issue a system-generated Form 16 but instead issued a manual salary certificate, as mentioned above. It was further submitted that the employer has deducted the TDS but has not deposited the same with the Government Treasury, and hence the TDS credit has not been reflected in Form 26AS. The learned AR submitted that, in this regard, the assessee made all possible efforts to communicate with the deductor company for the payment of TDS and filing the revised return of TDS in order to claim the TDS credit. But the company has failed to pay the TDS to the Government.

6. We find that the Co-ordinate Bench of the Tribunal, while considering a similar issue of non-granting of TDS credit relating to the salary income of one of the ex-employers of M/s. Unimark Remedies Limited, in M/s. Aditi Vipin Parikh, in ITA no.395/Mum/2023, for the assessment year 2018-19, vide order dated 19.04.2023, directed the AO to grant credit of TDS deducted from the salary of the taxpayer-employee by M/s. Unimark Remedies Limited. The relevant findings of the Co-ordinate Bench in the aforesaid decisions are reproduced as follows: -

"4. We heard the parties and perused the record. Before us, the Ld. A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of PCIT vs. Tata Communications Ltd, wherein it was held as under on an identical issue:-

*The Revenue is in Appeal against the Judgment of the Income Tax Appellate Tribunal (in short "the Tribunal"), raising the following common question for our consideration: -*

*"Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in directing the AO to give the credit of TDS on the basis of evidences produced for deduction of tax at source where the deductor has not issued TDS certificates or had failed to uphold the correct details in Form 26AS?"*

*3. Upon perusal of the impugned judgment of the Tribunal with the assistance of the learned Counsel for the parties, we notice that the Revenue had objected to the assessee's claim of Tax Deducted at Source (for short "TDS") from the payments made to the assessee on the ground that, there was mismatch in the TDS certificate issued by the deductors and the aggregate amounts arrived at as appearing in form 26-A. The Tribunal referred to and relied on the decision of this Court in case of Yashpal Sahni 293 ITR 539 and observed that, in case, the deductor has failed to uphold the correct details in form 26-A the benefit should be given to the assessee on the basis of evidence produced before the Department. Resultantly, the Tribunal only directed the Assessing Officer to verify the correct facts and give credit of TDS to the assessee. No question of law arises.*

*5. In the Instant case, it is the submission of assessee that she has claimed TDS credit on the basis of TDS certificate issued by the employer. If there is failure on the part of the emoloyer to upload the details of TDS, the assessee herein cannot be penalized by not giving credit of TDS amount deducted from her salary income.*

*6. At this juncture, we may also refer to the decision rendered by Hon'ble Gujarat High Court In the case of Devarsh Provinbhal Patel vs. ACIT (R/Special Civil Application No. 12965 of 2018 dated 24-09-2018), wherein Hon'ble Gujarat High Court has held that even If the employer has failed to deposit the TDS so deducted from the salary of the assessee to the credit of Central Government, still the department cannot deny the benefit of tax deducted at source.*

*7. In view of the foregoing discussions, we modify the order passed by Ld. CIT(A) and direct the assessing office to give credit of TDS deducted from the salary of the assessee by the employer for the year under consideration."*

7. The learned DR could not bring any material on record to deviate from the findings as rendered by the Co-ordinate Bench in the aforesaid decision in a similar factual matrix. Therefore, respectfully following the decision of the Co-ordinate Bench cited supra, we direct the AO to grant the assessee the

credit of TDS deducted from his salary for the year under consideration. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 26/09/2025

**Sd/-**

**NARENDRA KUMAR BILLAIYA  
ACCOUNTANT MEMBER**

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 26/09/2025**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai