

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.7018/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2012-13)

Mr.Raj Kapurchand Chandaria, Unit No.1202, 12 th floor, Tower B, Peninsula Corporate Park, G K Marg, Lower Parel, (W), Mumbai-400013	बनाम/ Vs.	Asstt Commissioner of Income Tax (CPC), Bengaluru, 2.Income Tax officer (Int.Taxation) 1(1), Mumbai.
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स्थायी लेखा सं./ PAN :AMNPC1467A

अपीलार्थी ओर से / Assessee by	Shri P B Chhapgar
प्रत्यर्थी की ओर से/Assessee by	Shri Shivaji Ghode

सुनवाई की तारीख / **Date of Hearing** : **10.11.2016**
घोषणा की तारीख / **Date of Pronouncement** : **17.11.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM

The appeal filed by the assessee is directed against the order dated 31.7.2014, passed by the CIT(A)-10, Mumbai, for the assessment year 2012-13.

2. The issue raised in the grounds of appeal no.1 is that the Id.CIT(A) has erred in not directing the "ACIT-CPC" to grant credit of tax deducted at

source of Rs.44,15,455/- on the commission received from AEGIS Logistics Limited.

3. Brief facts of the case are that the assessee filed his return of income on 31.7.2012 declaring a total income of Rs.1,42,97,500/- which was inclusive of commission income of Rs.1,42,89,500/- received from AEGIS Logistics Limited on which the payer had deducted tax at source of RS.44,15,455/- on 31.3.2011. The assessee offered the said commission income to tax in assessment year 2012-13 and also claimed tax deduced at source of Rs.44,15,455/- on the said commission. The said return was processed under section 143(1) of the Act by ACIT-CPC and intimation dated 14.6.2013 vide communication reference No. CPC/1213/P1/1223123198 u/s 143(1) of the Act raising a demand of Rs.658,800/- as payable including interest u/s 234B and 234C of the Act was received. The said demand has arisen because the ACIT-CPC has granted credit of tax deducted at source of Rs.37,08,000/- as against the amount of Rs.44,17,925/- claimed by the assessee in the return of income. The ACIT-CPC allowed the credit only of Rs.37,08,000/- which was deducted in financial year 2011-12 which was claimed by the assessee in the assessment year 2013-14 as the commission income on which the said TDS was deduced was also offered in AY 2013-2014. The assessee filed rectification application against the said intimation received u/s 143(1) dated

14.6.2013 and the ACIT-CPC passed order u/s 154 of the Act dated 29.4.2014 which was received by the assessee on 20.5.2014 which showed that the mistake was not corrected by the AO. In the appeal proceedings, the First Appellate Authority also upheld the action of the ACIT-CPC by observing and holding as under:

"3. *I have gone through the appellant's submissions. Having perused the same, I find that the appellant offered its income for A.Y.2012-13 as per return of income filed as on 31st July, 2012 wherein the appellant has disclosed total income of Rs.1,42,97,500/- which consists of commission income in the hands of the appellant of Rs.1,42,89,500/- received from M/s.Aegis Logistics Limited (ALL) wherein the TDS of Rs.44,15,455/- was made as per 26AS certificate annexed by the appellant on pages 13-15 of the paper book. Having perused the 26AS certificate, I find that the date of the transaction of such payment was 31st March 2011 wherein the deduction of tax were made u/s.195 of the Act. The perusal of the date of payment clearly suggest that the said payment should have been disclosed as income by the appellant in A. Y.2011-12 whereas the appellant has made the disclosure of the said income in A.Y.2012-13, though the date of transaction of such payment was 31.03.2011 i.e., the end of the financial year 2010-11. Further to that, the perusal of the said 26AS also suggest that similar other two payments were also made to the appellant of Rs.12,000/- each after deduction of tax at source of Rs.4,079/- on 07.10.2010 and 06.09.2010, which were also pertaining to A.Y.2011-12. The appellant has contended that the A.O. has wrongly granted only credit for TDS of Rs.37,08,000/- against Rs44,17,925/- as claimed by the appellant in the return of income towards commission income for the aforesaid A.Y.2012-13. The appellant further contends that it seems that ACIT, CPC, Bangalore has given credit for TDS of Rs.37,08,000/- which was deducted by M/s Aegis Logistics Limited in A.Y.2012-13. The appellant submitted that the commission income on which the tax of Rs.37,08,000/- was deducted was offered to tax in A.Y.2013-14 and consequently, TDS of Rs.37,08,000/- was claimed in A.Y.2013-14. Having taken note to the appellant's aforesaid contention and submission and then after having taken note to the appellant's aforesaid contention and submission and then after having perused*

form 26A5, which is appearing on page 7 of the paper book, which also suggest that the said payment was made to the appellant as on 31.03.2012, and hence the appellant was liable to make the disclosure in his returned income pertaining to A.Y.2012-13. In this perspective of the appellant's case, I consider it proper and appropriate to hold that the A.O.has rightly given credit to the appellant of TDS of Rs.37,08,000/- against the income disclosed for A.Y.2012-13 as the income as per 26AS appearing on page 10 of the paper book is required to be disclosed in A.Y.2012-13. Therefore, I do not find any infirmity in the order of the A.O. Hence, the action of the A.O is confirmed. However, I would also like to make an observation here that the A.O should note of the aforesaid decision in relation to the appellant's form 26AS and take remedial action, if any, required for taxability of the income in the correct assessment year. With this observation the appellants this ground of appeals is adjudicated"

4. At the outset, the Id.AR submitted before us that the issue raised in his appeal now stands covered by the decision of co-ordinate Bench of the Tribunal in Mr. Anish Kapurchand Chandaria Vis ACIT in ITA No. No.7019/Mum/2014 (AY- 2012-13) dated 15.9.2016. In view of this position, the Id. AR submitted that the appeal of the assessee be allowed by setting aside the order of CIT(A) and direct the AO to allow full credit of TDS of Rs.44,15,455 deducted on the corresponding income of Rs.1,42,89,500/- on account of commission received from M/s. Aegis Logistics Limited shown in the assessment year 2012-13 which was considered and followed in the earlier and succeeding year. The Id. DR relied heavily on the order of authorities below.

5. We have heard the rival contentions and perused the material placed before us including the order of co-ordinate bench of the Tribunal as relied upon by the assessee. We find that the assessee has shown income of from commission of Rs.1,42,89,500/--AY 2012-13 on which TDS was deducted on 31.03.2011. We further find that the AO assessed the income as shown by the assessee, however, credit was allowed of Rs.37,08,000/- which was deducted during the financial year 2011-12 relevant assessment year 2012-13 which was claimed by the assessee in the succeeding year i.e. AY 2013-14 as the corresponding income was received in that year. In other words, the ACIT allowed the credit of TDS which was deducted during the year whereas the assessee following system of accounting wherein the commission was shown as income under on receipt basis and also corresponding TDS was claimed. Therefore, we are not in agreement with the conclusion drawn by the Id. CIT(A) that ACIT-CPC has rightly allowed credit of TDS from the commission as the assessee has claimed TDS which was deducted on 31.3.2011 whereas the TDS of Rs.37,08,000/- deducted during the financial year 2011-12 and the credit whereof was claimed in AY 2013-14 as the income was received in that year. We find that the identical issue has been decided by the co-ordinate bench in the case of Mr. Anish Kapurchand Chandaria (supra), wherein the Co-ordinate Bench has held as under:

"5. We have considered the rival contentions and perused the material on record. We have observed that the assessee has offered for taxation commission income of Rs. 1,42,98,518/- for the assessment year 2012-13 on which tax is stated to have been deducted at source of Rs. 44,15,455/- which is claimed by the assessee in the return of income filed with Revenue. The said commission income was credited to the account of the assessee by deductor Aegis Logistics Limited as at 31-03-2011 and tax was stated to have been deducted at source by the deductor u/s. 195 of the Act amounting to Rs. 44,15,455/- which was reported to the Revenue to be pertaining to the assessment year 2011-12 while the said commission was stated to be subject to approval of shareholders which approval was accorded by the shareholders of Aegis Logistics Limited only in previous year 2011-12 and hence the assessee accounted for the income as well tax deducted at source thereon only in the assessment year 2012-13 which claim of credit of tax deducted at source was denied to the assessee in the assessment year 2012-13 on the ground that tax deducted at source pertained to the assessment year 2011-12 while credit of tax deducted at source of Rs.37,08,000/- was granted to the assessee which the assessee stated to have claimed in the assessment year 2013-14. The assessee had placed reliance on Section 199 of the Act of 1961 read with Rule 37BA of Income Tax Rules, 1962. The contentions of the assessee needs verification and we are setting aside and restoring this matter/issue to the file of learned AO/ACIT(CPC) who shall verify all the contentions of the assessee as well as return of income filed for the assessment years 2011-12 to 2013-14 to arrive at correct declaration of income and credit of tax deducted at source thereon in accordance with provisions of the Act including relied upon provisions of Section 199 of the Act read with Rule 37BA of the Income Tax Rules, 1962, specifically Rule 37BA(3) of Income Tax Rules, 1962 . It will also be verified by the learned AO/ACIT(CPC) that there is no double credit of prepaid taxes claimed by the assessee for these assessment years 2011-12 to 2013-14 and all the income are duly accounted for by the assessee and hence, thereafter, appropriate rectifications shall be carried out by AO/ACIT(CPC) to ensure correct income is brought to tax as well correct credit of prepaid taxes are granted to the assessee in accordance with the mandate of the Act. There is further grievance of the assessee with respect to denial on part of Revenue in granting credit of TDS of Rs 2790/- to the assessee which shall also be looked into by the AO/ACIT(CPC) in set aside proceedings. Needless to say that the learned AO/ACIT(CPC) shall

grant proper and sufficient opportunity of being heard to the assessee in accordance with the principles of natural justice in accordance with law. The assessee will be allowed to file all necessary and relevant evidences and explanations in support of his contentions. We order accordingly."

6. In view of the above facts and legal position, we find that the issue raised in this appeal stands covered by the decision of the Tribunal in the case of Mr. Anish Kapurchand Chandaria(supra). Therefore, respectfully following the decision of the Tribunal cited supra, we allow the appeal of the assessee for statistical purposes.

7. In the result, appeal of assessee is allowed for statistical purposes.

Order has been pronounced in the Open Court on 17.11.2016.

Sd
(**MAHAVIR SINGH**)
Judicial Member

sd
(**RAJESH KUMAR**)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 17.11.2016

Sr.PS:SRL:

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

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