

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.6580/DEL/2019
Assessment Year 2016-17

M/s. Interglobe Entreprises Pvt. Ltd., Block 2B, DLF Corporate Park, DLF City, Phase III, Gurgaon, Haryana		Assistant Commissioner of Income Tax, Circle-12(2), I.P. Estate, C.R. Building, New Delhi.
TAN/PAN: AAACG3351K		
(Appellant)		(Respondent)

Appellant by:	Shri Negesh Kumar, Adv.		
Respondent by:	Ms. Anupama Singla, Sr.DR		
Date of hearing:	31	05	2022
Date of pronouncement:	07	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-IV, New Delhi ('CIT(A)' in short) dated 30.05.2019 arising from the assessment order dated 28.12.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2016-17.

2. Briefly stated, the assessee declared an income of Rs.1,66,11,872/- for Assessment Year 2016-17 in question and *inter alia* claimed credit for TDS amounting to Rs.16,61,185/- deducted by deductor in the subsequent Assessment Year 2017-18. The assessee claimed credit of TDS in Assessment Year 2016-17

qua the corresponding income reported in that year and not in the subsequent Assessment Year 2017-18 where the TDS was actually deducted and reflected in the annual information statement generated by the Department in form 26AS. The Assessing Officer however did not grant credit of TDS in Assessment Year 2016-17 reportedly on the premise that such credit is not reflected in form no.26AS for Assessment Year 2016-17 in question.

3. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however declined to grant relief in Assessment Year 2016-17 in question but however directed the Assessing Officer to allow such credit in the succeeding assessment year, i.e., Assessment Year 2017-18 on the basis of form 26AS concerning Assessment Year 2017-18.

4. Aggrieved by the postponement of credit of TDS made available to the assessee in Assessment Year 2017-18 instead of Assessment Year 2016-17 in question, the assessee preferred appeal before the Tribunal.

5. We have carefully considered the rival submissions. It is the case of the assessee that when the issue of availability of TDS credit in the appropriate assessment year is examined in the light of Section 199(3) r.w. Rule 37BA(3) of the Income Tax Rules, it would be clear that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. The assessee contends that the TDS credit is available in the financial year where the corresponding income has been referred by the assessee. A reference was made to the decision of the Co-ordinate Bench in the case of *Greatship India Ltd. vs. DCIT in ITA*

No.5562/Mum/2018 order dated 8th June, 2020 to contend that the TDS credit cannot be postponed to a different assessment year on the basis of deduction carried out by the deductor when the accrued income from such transaction has been reported in the earlier assessment year.

6. A combined reading of Section 199(3) r.w. Rule 37BA(3) makes the position of law clear that credit for TDS is available in the year in which the income is reported and as a corollary, should not be deferred to some other assessment year. In the instant case, the Revenue has allowed the credit in the subsequent assessment year when the TDS is shown to have been credited in the form 26AS. However, as stated on behalf of the assessee, the corresponding income will not be found to be recorded and therefore such direction would belie the letter and spirit of Section 199(3) and Rule 37BA(3) thereto. Thus, on first principles, we are inclined to agree with the stand taken on behalf of the assessee for eligibility TDS credit in the Assessment Year 2016-17 itself when income has been claimed to have accrued/arisen and included for determination to chargeable income.

7. In the same vein, however, we note that no positive finding of the Revenue Authorities below is available to show as to whether tax credit for TDS reflected in form No. 26AS in Assessment Year 2017-18 has been claimed or otherwise in that assessment year. A verification of factual position is required to shun the possibility of double claim. The assessee shall be entitled to credit of TDS corresponding to the income reported in the Assessment Year 2016-17 itself provided; (i) the assessee has not claimed any credit of TDS in any other assessment year; (ii) an

undertaking/affidavit is placed by the assessee before the Revenue Authorities to lend assurance that such credit claimed in Assessment Year 2016-17 shall not be doubly claimed in any other assessment year in future based on form 26AS or any other document. On being satisfied, the Assessing Officer shall grant the TDS credit in terms of observations made hereinabove. With these observations, the impugned order of the CIT(A) is set aside and restore back to the file of the Assessing Officer for grant of credit in accordance with law.

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

Order pronounced in the open Court on 07/06/2022.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

DATED: /06/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER