

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

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

I.T.A. No.4597/DEL/2018  
Assessment Year 2016-17

Ujjwal Singh, C1-102, The Legend Apartments, Sushant Lok-3, Sector-57, Gurgaon, Haryana.	Vs.	DCIT, CPC Bangalore.
TAN/PAN: ANXPS6618Q		
(Appellant)		(Respondent)

Appellant by:	Shri Saten Sethi, Adv.		
Respondent by:	Shri Abhishek Kumar, Sr.DR		
Date of hearing:	08	06	2022
Date of pronouncement:	18	07	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A)-I, Gurgaon dated 05.04.2018 arising from the intimation order passed by the Assessing Officer under Section 154 of the Act dated 10.10.2017 concerning Assessment Year 2016-17.

2. Briefly stated, the assessee declared income of Rs.1,01,79,310/- for the Assessment Year 2016-17 in question and *inter alia* claimed credit for TDS amounting to Rs.5,70,516/- deducted by deductor, namely, KIN Finserv LLP in the preceding Assessment Year 2015-16. The assessee however claimed credit of TDS in Assessment Year 2016-17 on the ground that the bill was

raised in Financial Year 2015-16 on 01.08.2015 and thus the income accrued in Assessment Year 2016-17 also included in the return of income in the Assessment Year 2016-17 notwithstanding the deduction of TDS by the payer in Assessment Year 2015-16. The assessee claims to have reported an income of Rs.57,05,156/- based on invoices dated 01.08.2015 in the Assessment Year 2015-16 and accordingly the assessee is entitled to TDS credit in the year in which the income is reported, i.e., Assessment Year 2016-17 in terms of Section 199(3) r.w. Rule 37BA(3) of the Income Tax Rules. The Assessing Officer however denied the credit of TDS of Rs.5,70,516/- while processing the return under Section 143(1) purportedly on the ground such TDS is not reflected in the annual information statement in form 26AS generated by the Revenue. The assessee filed rectification application before the Assessing Officer. However, the Assessing Officer vide order dated 10.10.2017 denied the credit of the TDS in dispute.

3. The assessee preferred appeal before the CIT(A) against the aforesaid rectification order passed by the Assessing Officer. The CIT(A) vide order dated 05.04.2018 however dismissed the appeal for the reason that issue is debatable and thus outside the scope of Section 154 of the Act.

4. Aggrieved by the impugned order of the CIT(A) against the rectification order passed by the Assessing Officer, the assessee preferred appeal before the Tribunal.

5. When the matter was called for hearing, the learned for the assessee submitted that in the instant case the tax has been deducted by the payer in Financial Year 2014-15 relevant to Assessment Year 2015-16 for which the invoice was drawn by the

payee in Financial Year 2015-16 relevant Assessment Year 2016-17. The assessee thus has included an income of Rs.57,05,156/- in the Assessment Year 2016-17, i.e., in the year in which invoice has been raised and income accrued to the assessee. However, the Assessing Officer had denied the corresponding credit of TDS in the Assessment Year 2016-17. The assessee has also not claimed the credit for TDS in Assessment Year 2015-16 where the deduction was carried out by the payer and reflected in the form 26AS of that Assessment Year. This has resulted in double jeopardy leading to paying the taxes twice. It was contended that with the insertion of Rule 37BA w.e.f. Assessment Year 2009-10, the law is clear without any room for any ambiguity when read in conjunction with Section 199 of the Act. As per the law laid down in Section 199 r.w. Rule 37BA(3), the credit for TDS shall be allowed by the Assessing Officer in the year when the income has been offered by the assessee. In the instant case, the income has been offered by the assessee in the year of its accrued in Assessment Year 2016-17 and rightly so, hence the credit for TDS deserves to be allowed in Assessment Year 2016-17 as claimed in terms of Section 199 r.w. Rule 37BA(3). A reference in this regard was made to the decision rendered in *Mahesh Software System Pvt. Ltd. vs. ACIT (2020) 181 ITD 524 (Pune)* and; *Shiv Gange Dealers Pvt. Ltd. vs. CPC (ITA No. 174/INd/2021) dated 17.05.2022* dealing with a case arising out of order passed under Section 154 of the Act. In the light of the factual matrix and the clear position of law, it was submitted that refusal to grant TDS credit in Assessment Year 2016-17 is against the mandate of law and apparent error on the contours of Section 154 of the Act.

6. Ld. DR for the Revenue relied upon the order of the lower

authorities.

7. The Co-ordinate Bench of Tribunal in M/s. Interglobe Enterprises Pvt. Ltd. vs. ACIT, New Delhi order dated 07.06.2022 has dealt with identical issue as under:

*“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.”*

8. Thus, the position of law being clear, we have no hesitation to accept the plea of the assessee. Denial of TDS credit in contradiction to the plain provisions of Section 199 r.w. Section Rule 37BA is clearly in the league of apparent error and thus liable to be rectified under Section 154 of the Act.

9. Hence, the assessee would be entitled to claim of credit of TDS corresponding to the income reported in Assessment Year 2016-17 itself, provided the assessee has not claimed any credit for TDS in earlier Assessment Year 2015-16. On being satisfied, the Assessing Officer shall grant the TDS credit in terms of observations made hereinabove. The impugned order of the CIT(A) is set aside and the matter restored back to the file of the Assessing Officer for grant of credit in accordance with law.

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

**Order pronounced in the open Court on 18/07/2022.**

Sd/-

**[SAKTIJIT DEY]  
JUDICIAL MEMBER**

DATED: /07/2022

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**