

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.675/PUN/2022

निर्धारण वर्ष / Assessment Year : 2021-22

Anil Ratanlal Bohora, 24, Bohora House, Gangapur Road, Nashik – 422 002 Maharashtra PAN : AHPPB9080M	Vs.	ACIT, Circle-1, Nashik
Appellant		Respondent

## Assessee by Revenue by

Shri Pramod Shingte  
Shri Ramnath P. Murkunde

Date of hearing 18-01-2023  
Date of pronouncement 19-01-2023

## आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee is directed against the order dated 20-07-2022 passed by the 1d. CIT(A) in National Faceless Appeal Centre, Delhi u/s. 250 of the Income-tax Act, 1961 (hereinafter also called ‘the Act’) in relation to the assessment year 2021-22.

2. The only issue pressed by the ld. AR is against not allowing credit for tax deducted at source amounting to Rs.2,80,456/-.

3. Succinctly, the facts of the case are that the assessee filed return declaring total income of Rs.8,42,68,650/- An Intimation was issued u/s.143(1) of the Act disallowing, *inter alia*, credit for tax deducted at source amounting to Rs.2,80,456/- on interest income. According to the CPC, Form No.26AS did not contain/contained partial amount of TDS with respect to TAN mentioned in schedule TDS 1/TDS 2/TCS. The assessee appealed against the Intimation issued u/s 143(1) submitting before the ld. CIT(A) that he gifted certain amount to his wife, out of which she made deposits with State Bank of India. As per Form no. 26AS, she earned total interest income of Rs.39,26,260/- with deduction of tax at source amounting to Rs.2,94,474/-. Since the deposit was made out of the gift made by him, the assessee included proportionate interest income in his total income u/s.64 and also claimed credit for proportionate tax deducted at source. The ld. CIT(A) observed that the provisions of Rule 37BA(2) were not complied with and as a result, the assessee was not entitled to the credit for deduction of tax at source. This has brought the assessee before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. It is undisputed that the assessee gifted certain amount to his wife, who, in turn, made deposits of such sum with State Bank of India. Total interest income of Rs.39.26 lakh enured in her hands, which included interest income of Rs.37,42,048/- earned from deposits made with the amount gifted by the assessee. Considering the provisions of section 64, the assessee *suo motu* included such interest income of Rs.37.42 lakh in his total income and claimed credit for the proportionate tax deducted at source at Rs.2,80,656/-, which got denied by the authorities on the ground that the mandate of Rule 37BA was not fulfilled.

5. Section 199(1) of the Act, with the marginal note 'Credit for tax deducted', provides through sub-section (1) that the amount of tax deducted at source on the amount of income shall be treated as payment of tax on behalf of deductee. Sub-section (3) of section 199 is relevant for our purpose, whose material part states that: 'The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the

purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) ....’. Thus it is overt that sub-section (3) recognises that where the income on which tax was deducted at source in the hands of ‘A’, is actually chargeable to tax in the hands of ‘B’, credit for tax deducted at source on such income shall be allowed to ‘B’. The relevant rule is 37BA with a caption “Credit for tax deducted at source for the purposes of section 199”. Sub-rule (1) provides that credit for tax deducted at source shall be given to the person to whom payment has been made or credit has been given. Sub-rule (2) is significant for our purpose, whose relevant part states as under :

*‘(2) (i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).

(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.'

6. A careful perusal of sub-rule (2) indicates that where the income, on which tax has been deducted at source, is assessable in the hands of a person other than deductee, then credit for the proportionate tax deducted at source shall be given to such other person and not the deductee. The proviso to sub-rule (2) provides for deductee filing a declaration with the deductor giving particulars of the other person to whom credit is to be given. On receipt of such declaration, the deductor shall issue certificate for the deduction of tax at source in the name of such other person. The crux of section 199 read with Rule 37BA(2) is that if the income, on which tax has been deducted at source, is chargeable to tax in the hands of the recipient, then credit for such tax will be allowed to such recipient. If, however, the income is fully or partly chargeable to tax in the hands of some other person because of the operation of any provision, like section 64 in the extant case, the proportionate credit for tax deducted at source should be allowed to such other person who is chargeable to tax in respect of such income, notwithstanding the fact that he is not the

recipient of income. It is with a view to regularise the allowing of credit for tax deducted at source to the person other than recipient of income, that the proviso to Rule 37BA(2) has been enshrined necessitating the furnishing of particulars of such other person by the recipient for enabling the deductor to issue TDS certificate in the name of the other person. The proviso to Rule 37BA(2) is just a procedural aspect of giving effect to the mandate of section 199 for allowing credit to the other person in whose hands the income is chargeable to tax. The entire purpose of this exercise of allowing credit to the other person is to ensure that the benefit of tax deducted at source is availed once and that too, by the right person, who is chargeable to tax in respect of such income. It is just to streamline the procedure for giving effect to this intent and rule out the possibility of taking any inappropriate credit for the amount of tax deducted at source, firstly, by the recipient who is not chargeable to tax and secondly, by the person who is rightly chargeable to tax in respect of such income, that the procedural provision has been put in place in Rule 37BA(2). One needs to draw a line of distinction between substantive provision [section 199 read with Rule 37BA(2) without proviso] and the procedural

provision [proviso to Rule 37BA(2)]. Non-compliance of a procedural provision, which is otherwise directory in nature, cannot disturb the writ of a substantive provision.

7. Adverting to the facts of the extant case, it is seen that out of total interest income credited to assessee's wife as per Form No.26AS amounting to Rs.39.26 lakh, she included interest from SBI in her total income to the extent of Rs.1,84,212/-. The assessee included the remaining interest of Rs.37.42 lakh in his income because of the applicability of section 64 of the Act. The assessee and his wife claimed proportionate tax credit, which totals up to Rs.2,94,474/-. This deciphers that the total interest income received by the assessee's wife got taxed partly in her own assessment and partly in the assessment of her husband, the assessee in question, as per the mandate of section 64. The benefit of TDS has also been claimed accordingly. Merely because the assessee's wife did not furnish declaration to the bank in terms of proviso to Rule 37BA(2), the amount of tax deducted at source, which is otherwise with the Department, cannot be allowed to remain with it eternally without allowing any corresponding credit to the person who has been subjected to tax

in respect of such income. As the substantive provision of section 199 talks of granting credit for tax deducted at source to the other person, who is lawfully taxable in respect of such income, we are satisfied that the matching credit for tax deducted at source must also be allowed to him. In view of the fact that the tax of Rs.2,80,656/- has actually been deducted at source on the interest income of Rs.37.42 lakh, we hold that the credit for such TDS should be allowed to the assessee, who has been subjected to tax in respect of such income. This ground is allowed.

8. No other ground was pressed by the ld. AR. The same, therefore, stand dismissed.

9. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 19<sup>th</sup> January, 2023.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 19<sup>th</sup> January, 2023  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A) concerned
4. The Pr. CIT concerned
5. DR, ITAT, 'A' Bench, Pune
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	18-01-2023	Sr.PS
2.	Draft placed before author	19-01-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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