

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.973/Bang/2023
Assessment Year: 2017-18

DCIT Circle-2(1)(1) Bangalore	Vs.	Cicon Engineers Private Limited Cicon House, No.61/2 Doddakallasandra Gubbalala Cross Kanakapura Road Bangalore Karnataka 560 062 PAN NO : AACCC1293J
APPELLANT		RESPONDENT
Assessee by	:	Shri A.C. Raju, A.R.
Revenue by	:	Shri Parithivel, D.R.

Date of Hearing	:	05.02.2024
Date of Pronouncement	:	05.02.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue is directed against order of NFAC dated 30.9.2023 for the assessment year 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The revenue has raised following grounds of appeal:

1. (i) *Under the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing credit of TDS Rs. 49.71.083/- in the AY 2017-18.*
(ii). *Under the facts and circumstances of the case, the Ld. CIT(A) has erred in giving direction to the Assessing Officer which is not in conformity with the provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962.*
(iii). *Under the facts and circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that Proviso to sub-section 20 to See 155 of the Act prohibits credit of TDS in any assessment year other than the AY in which corresponding income was offered.*
2. (i) *Under the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing credit of TDS Rs. 37,37,514/- in the AY 2017-18.*

ii.. Under the facts and circumstances of the case, the Ld. CIT(A) has erred in giving direction to the Assessing Officer which is not in conformity with the provisions of Rule 37BA(3)(ii) of the Income Tax Rules, 1962

Total Tax effect: Rs.87,08,597/-

2. Facts in ground No.1 of this appeal is related to restricting the TDS of Rs 49,71,083/- on Rs 24,85,54,177/- being the sales relating to the F.Y. 2015-16. The assessee is in the business of civil constructions of commercial complexes, Industrial, Institutional and residential projects. According to A.O, there is mismatch in turnover reported as per financials and turnover as appearing in Form No. 26AS. The mismatch in turnover was on account of sales of F.Y. 2015-16 considered by the assessee in F.Y. 2016-17 and mobilization advance received from customs, on which TDS has been considered but not taken for turnover in financials of A.Y.2017-18. The relevant provisions of Rule 37BA(3)(ii) which reads as follows :

"Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax."

2.1 List of clients who have considered previous year sales for remittance of TDS during the year 2016-17 is as under:

Name of the client	PAN No.	Amount (Rs.)
BOSCH Ltd.	AAACM9840P	3,25,51,080
EFD Induction Pvt. Ltd.	AAACE3219Q	1,02,82,695
International Institute of Information Technology		3,90,20,356
India Build Villas Development Pvt. Ltd.	AACCI3931K	4,69,23,428
Toyota Industries Engine India Pvt. Ltd.	AAFCT3122J	3,78,99,908
Shimzu Corporation India Pvt. Ltd.	AAPCS4719L	1,62,59,914
Stump Schuele & Somappa P. Ltd.	AACCS228STG	4,03,56,553
Shri Vile Parle Kelavani Mandal	AABTS8228H	2,52,60,243
Total		24,85,54,177

2.2 According to the A.O, the income pertaining to these receipts has accrued as well as offered to tax in the previous assessment years. However, TDS of Rs 49,71,083/- has been claimed in current A.Y. i.e. A.Y. 2017-18 which is not allowable as per sec 199 r.w.r. 37BA. For this reason, AO has restricted TDS credit of Rs 49,71,083/- in A.Y. 2017-18. The assessee has submitted that the tax is deducted by the deductor in the year in which the income has been actually paid to the assessee. However, following the above method, the assessee has already disclosed this income in earlier year in their return of income which resulted in TDS mismatch since the corresponding income has already been offered to tax in earlier years, however, the TDS is deducted much later when only payment is made by the deductor to the assessee. Therefore, the assessee is barred from claiming the credit of TDS in the year in which tax was deducted as the corresponding income has already been offered in the earlier years. To remove this difficulty, the Finance Act, 2023 has inserted sub-section 20 to Sec 155 to facilitate allowing credit if TDS in the year of TDS made to avoid re-opening of earlier assessment or lapse of time to file the revised return. Before 1d. CIT(A), the assessee has submitted extract of memorandum. Here, the assessee has offered the income to tax in earlier years and TDS was not claimed due to late payment by deductor which shall not punish the assessee by not allowing credit of TDS in the year when TDS was actually made. This will result in taxation of income but not allowing the corresponding TDS credit which will be against the provisions of the Act. Accordingly, the 1d. CIT(A) observed that the contention of the assessee is found to be correct and the A.O is directed to allow TDS credit of Rs 49,71,083/- in A.Y. 2017-18 after verifying whether the corresponding income has been offered for taxes in earlier years by the assessee. Against this revenue is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. The contention of the 1d. D.R. is that the income and TDS has to go together in an assessment year where

the income has been offered for taxation. According to the 1d. D.R., if the income is offered in earlier assessment year, the TDS has to be given credit in that assessment year only and in the present assessment year an amount of Rs.49,71,083/- is TDS relating to earlier assessment year and the NFAC/CIT(A) is not justified in observing that if the income has bee offered to taxation in earlier assessment year, the TDS credit to be given in this assessment year, which is incorrect. The 1d. A.R. relied on the order of lower authorities. In our opinion, as rightly pointed out by the 1d. D.R., income and TDS credit to go together in any assessment year when the income has been accrued to the assessee. The contention of the 1d. A.R. is that in earlier assessment year, it has been shown as a mobilization advance by payee and not an expenditure in the hands of that assessee as the assessee has no right to receive such amount as sales receipt. In other words, it is only payment made in advance. In our opinion, this issue requires to be examined at the end of 1d. AO and TDS credit to be given to the assessee in the year of offering the said amount of Rs.24,85,54,177/- + TDS as income of the assessee. In other words, TDS cannot be isolatedly taken in any assessment year without offering the corresponding income for taxation. With this observation, we remit the issue to the file of 1d. AO for fresh consideration.

4. Now we will adjudicate ground Nos.4 & 5. These grounds relate to restricting the TDS of Rs 37,37,514/- on Rs 18,68,75,688/- being the mobilization advance received during the F.Y. 2016-17. The assessee has received mobilization advance in F.Y. 2016-17 but the income on this has been offered in subsequent years as this was the only advance which was adjusted against the bills as and when earned proportionately. Since the income was not offered in the current A.Y 2017-18, the AO has not allowed corresponding TDS credit of Rs 37,37,514/- as per Sec 199 r.w.r. 37BA. During the F.Y. 2016-17, the assessee has accounted mobilization advance receipt of Rs 18.68 crore and claimed

TDS on this advance. Similarly, the assessee has recovered mobilization amounting to Rs 20.4 crores from sales bills on which there is no TDS deducted as the same has already been deducted at the time of paying the advance. So according to the assessee, if the receipt of advance and recovery of advance is considered together then there is more recovery in excess of receipt during the current year. The assessee has stated that this procedure is being consistently followed since inception of the company and the method is in compliance with accounting principles and there is no escapement of income. The assessee has further stated before NFAC that the AO has resorted to restrict the TDS on mobilization of advance for the first time and departed from the principles of consistency. NFAC directed the 1d. AO to verify whether the same principle has been adopted by the assessee in the past as well as during the current A.Y. and if the contention is found correct, then allow the TDS credit of Rs 37,37,514/- in respect of mobilization advance received but corresponding income offered to tax in subsequent years. NFAC further directed the 1d. AO to check the principle of consistency before allowing this TDS credit and allowed the ground of assessee subject to verification as directed.

5. We have heard the rival submissions and perused the materials available on record. 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 offered 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.

5.1 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, if the Revenue has allowed the credit in the subsequent assessment year when the TDS is shown to have been credited in the form 26AS, then assessee cannot claim the same in this A.Y. 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 of TDS credit in the Assessment Year 2017-18 itself when income has been claimed to have accrued/arisen and included for determination to chargeable income.

5.2 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 another 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 2017-18 itself provided; (i) the assessee

has not claimed any credit of TDS in any other assessment year; (ii) an undertaking/affidavit is to be placed by the assessee before the Revenue Authorities to lend assurance that such credit claimed in Assessment Year 2017-18 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 AY 2017-18 in terms of our observations herein.

5.3 The same view was taken in the case of coordinate bench in the case of Interglobe Enterprises Pvt. Ltd. in ITA No.6580/Del/2019 dated 7.6.2022 for the assessment year 2016-17. In view of this, we direct the AO to give TDS credit in terms of above observation. This ground of revenue's appeal is partly allowed for statistical purposes.

6. In the result, appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 5th Feb, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 5th Feb, 2024.
VG/SPS



Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**