

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA No. 274/Ahd/2023
Assessment Year 2017-18**

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| Dhirajlal Savailal Shah, 3-A, Shital Sagar Appts, 2 nd Floor, Sard AR Patel Nagar Nr. Nest Hotel, Ahmedabad PAN: AGAPS0774M (Appellant) | Vs | The Income Tax Officer, Ward-5(3)(1), Ahmedabad, (Respondent) |
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Assessee by: Shri Hardik Vora, A.R.
Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.

Date of hearing : 19-12-2023
Date of pronouncement : 05-01-2024

आदेश/ORDER

This is an appeal filed against the order dated 27-02-2023 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2017-18.

2. The grounds of appeal are as under:-

“1. That the ld. CIT(A) has erred in confirming the order of assessing officer passed u/s. 154 of the Act rejecting the claim of appellant of TDS of Rs. 1,42,500/-.

2. That the various reasons advanced by ld. CIT(A) in passing the order are contrary to the facts of the case and evidence on record.

3. The appellant respectfully submits that TDS is deducted by buyer of the property, the same is reflected in 26AS. Further, the appellant is not required to show the income as only banakhat without possession is executed. The appellant therefore submits that the claim of TDS of Rs. 1,42,500/- be allowed.

4. The appellant craves leave to add, alter or amend any of the grounds of appeal before final hearing of appeal.”

3. The assessee is an individual. For assessment year 2017-18, the assessee filed return of income on 15-03-2018 declaring total income for Rs. 2,37,970/-. During the year, the assessee sold an agricultural land located in rural area and therefore did not pay capital gain tax on the same. The buyer of the land was also not required to make TDS on the same. However, the buyer of the land made TDS of Rs. 1,42,500/- by mistake. These are the submissions of the assessee before the CIT(A). The TDS was reflected in Form 26AS and therefore the assessee claimed credit for the same in the return of income. While processing the return of income u/s. 143(1) of the Act, the CPC, Bangalore did not give credit of TDS on property for Rs. 1,42,500/- and therefore the

assessee filed rectification against the same. However, the same was not accepted by the Revenue.

4. Being aggrieved by the rectification order u/s. 154 of the Income Tax Act dated 28-11-2019, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that the assessee sold immovable property being agricultural rural land and accordingly the purchaser was subjected to TDS of Rs. 1,42,500/- on the said transaction. The assessee filed return of income for the year under consideration claiming the subjected TDS. However, the same was not given credit by the CPC as the corresponding income was not admitted by the assessee as the assessee derived the said income from agricultural rural land which is exempt from tax. The ld. A.R. further submitted that as the TDS is reflected in 26AS credit should have been allowed as there is only banakhat and no income was required to be shown in the return of income. If the receipt is not liable to tax in the hands of the recipient for any reason, the same cannot be a ground for not granting credit for TDS. The credit for TDS is shown in 26AS and thus the same is correctly reflected in the return of income which was pointed out at page 59 before the CIT(A).

6. The ld. D.R. submitted that the income was not reflected whether it is an agricultural land and the selling of the said land, therefore the Assessing Officer as well as CIT(A) has rightly made the addition. It is clear that if claim should be made in return of income and in absence of the same, the assessee is not entitled for any claim as such since there is no corresponding income in the return of income. The assessee's claim for TDS was rightly disallowed by the Assessing Officer which was confirmed by the CIT(A).

7. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the return of earlier years of the assessee, 26AS statement, Form 16 & Form 16A and specially in assessee's case Form 26AS, the TDS deducted by the purchaser of the said agricultural land was properly reflected. The observations of the CIT(A) as well as by the Assessing Officer that the same is not reflected in 26AS is not justifiable. Therefore, the credit for TDS should have been allowed by the Assessing Officer. The CIT(A) ignored the same fact and without any detailed reasoning except that quoting the section 143 memorandum of Finance Bill 2016 and the decision of ITAT Pune Bench there is no reasoning in respect of assessee's case. Hence, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 05-01-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 05/01/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद