IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA Nos.3334 & 3335/Mum/2023
Assessment Year: 2019-20 & 2018-19

Shri Ajit Chandrashekar Dighe, C-607, Siddhi Co-op. Housing Society, Eastern Express Highway Louiswadi, Thane-400 604.	**Vs.**	The DCIT, Qureshi Mansion, Gokhale Road, Thane.

[**PAN:** AECPD 1288 F]

(Appellant) **(Respondent)**

Appellant by	:	Shri Shashank Mehta, CA
Respondent by	:	Shri Manoj Kumar Sinha, Sr.DR

Date of Hearing	:	01.02.2024
Date of Pronouncement	:	21.02.2024

O R D E R

Per N.K. Choudhry (JM):

The issues involved in both the appeals are identical. Therefore, for the sake of brevity, both the appeals were heard together and are being disposed off by this consolidated order and ITA No.3335/Mum/2023 for the AY 2018-19 as a lead case.

2. In the instant case, the Assessee had declared its total income of Rs. 42,40,705/- by filing its return of income on 23.07.2018. The breakup of the income earned by the Assessee is as under:

• Income from Salary – Rs.41,23,173/-
• Bank interest – 1,17,532/-

3. The Assessee also claimed TDS amounting to Rs.10,45,439/- was deducted by employer i.e. M/s.Nirmal Lifestyle Ltd. from salary u/s.192 of the Income Tax Act, 1961 (in short "the Act"), which was not allowed by the Assessing Officer (in short "the AO") mainly on the ground that the employer of the Assessee has not reflected the TDS in Form No.26AS.

4. The Assessee being aggrieved, challenged the non-allowing of TDS credit of Rs.10,45,439/- before the Ld. Commissioner, who ultimately affirms the said addition by observing as under.

" That it is seen that the TDS amount of Rs.10,45,439/- has not deposited by the employer to the Government Treasury, though the amount was deducted from the Assessee's salary income, the Assessee also did not furnish any salary slips or Form No.16 and the amount has not been deposited in the Government Treasury. There was no payment of tax of Rs.10,45,439/- in the form of TDS by the employer. Therefore, the AO has not made any mistakes in non-granting of TDS amount of Rs.10,45,439/- ."

5. The Assessee being aggrieved, challenged the aforesaid addition before Tribunal and mainly claimed that if the employer has deducted TDS on salary u/s.192 of the Act, and may not have deposited the same in the Government

Treasury, then also, the Assessee is entitled to get the claim of TDS as the Assessee cannot be denied the benefit of TDS which is benevolent in nature. On the contrary, the ld. DR refuted the claim of the Assessee.

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. The Assessee mainly claimed that employer of Assessee in fact, not provided Form No.16. The Assessee further claimed that employer of the Assessee is also a regular defaulter and in another incidence/case of another employee has also not deposited the TDS amount deducted u/s.192 of the Act, which resulted into filing a case which went up to the Hon'ble Bench of the Tribunal at Pune and in the case of Chandrashekhar Sadashiv Potphode v. DCIT in ITA No.508 & 509/Pun/2022 dated 06.01.2023, the Hon'ble Tribunal granted the relief by allowing the TDS credit mainly on the reason that the only option to the Revenue is to recover the TDS amount not deposited by the employer who has deducted TDS and not from the Assessee as per provisions of Sec.205 of the Act.

6.1 No doubt, the contention raised by the Assessee seems to be reasonable and logical, however, Assessee is required to discharge its primary onus by producing relevant documents, then only, can claim the right in its right perspective. We observe that the Assessee by filing TDS working which is though initialed by somebody but the same is neither on proper letter head nor there is a name of the person who signed such document and even otherwise, the Assessee has also failed to file any document, wherefrom it can be reflected that the Assessee has received any particular amount of salary

on which TDS has been deducted and therefore, in absence of relevant documents, the Ld. Commissioner correctly held that the AO has not made any mistake in non-granting of credit of TDS, since, the Assessee did not furnish any salary slip or Form No.16. We also observe that in the aforesaid case i.e. Chandrashekhar Sadashiv Potphode (supra) the Assessee was able to **prima facie** establish its case by producing relevant documents , whereas in this case the Assessee has failed to do so.

6.2 However, we by considering peculiar facts and circumstances of the case, observe that in absence of relevant documents, the issue remained to be adjudicated properly and in its right perspective and therefore, for proper and just decision of the case and for the end of the justice, we deem it appropriate to remand the instant case to the file of the Ld. Commissioner for decision afresh on the issue under consideration by giving reasonable opportunity to the Assessee to produce the relevant documents, such as appointment letter, salary slips or Form No.16 or bank statements or any other corroborative evidence/documents to substantiate its claim. We clarify that **prima facie** onus would be upon the Assessee to substantiate its claim. Consensually **ITA No.3335/Mum/2023** for the AY 2018-19 is allowed for statistical purposes.

ITA No.3334/Mum/2023 for the AY 2019-20:

8. In view of our decision in ITA No.3335/Mum/2023 for the AY 2018-19, this appeal i.e. **ITA No.3334/Mum/2023** for the AY 2019-20 also stands allowed for statistical purposes in the same terms.

9. In the result, both the appeals filed by the Assessee stands allowed for statistical purposes.

Order pronounced on the 21st day of February, 2024.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(NARENDER KUMAR CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

TLN, Sr.PS (on Tour)

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The DR, ITAT, Mumbai
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By Order

Dy./Asst. Registrar, ITAT, Mumbai