

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

श्री आय. पी. बंसल, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI I. P. BANSAL, JM AND SHRI SANJAY ARORA, AM**

आयकर अपील सं./I.T.A. No. 4828/Mum/2012

(निर्धारण वर्ष / Assessment Year: 2009-10)

LSG Sky Chef (India) Pvt. Ltd. C/o. Kalyaniwalla & Mistry, Army & Navy Building, 3 <sup>rd</sup> Floor, 148, M. G. Road, Fort, Mumbai-400 001	<b>बनाम/</b> Vs.	Dy. CIT-5(2), Aayakar Bhavan, M. K. Marg, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACL 6533 C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri M. M. Golvala & Shri Amey Wagle
प्रत्यर्थी की ओर से/Respondent by	:	Shri M. L. Perumal
सुनवाई की तारीख / Date of Hearing	:	27.02.2014
घोषणा की तारीख / Date of Pronouncement	:	27.03.2014

**आदेश / ORDER**

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-9, Mumbai ('CIT(A)' for short) dated 23.04.2011, partly allowing the assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2009-10 vide order dated 30.12.2011.

2. The only issue arising in the instant appeal is the short credit of the tax deducted at source, claimed by the assessee in the sum of Rs.92,52,162/- per its return of income. The

Id. CIT(A), before whom the assessee carried the matter in appeal, claiming the short deduction at Rs.24,53,334/-, decided the matter thus:

‘5.1 I have carefully and dispassionately considered the facts and circumstances of the case. As far as ground of appeal no. 1 & 2 are concerned, the LAO is directed to grant correct TDS credit in accordance with the tax deducted and deposited by the deductors in the name of present appellant during the financial year 2008-09 relevant to assessment year 2009-10 and in accordance with the CBDT’s circular/instructions and guidelines on the captioned subject.

5.2 As far as ground of appeal no.3 is concerned, the LAO is directed to verify whether the refund issued of Rs.67,47,235/- was adjusted against the existing demand or was it actually delivered to the tax payer. In case, the refund has not been issued at all, then necessary action may be taken at his end.’

Aggrieved, the assessee is in second appeal.

3.1 Before us, the assessee emphasized it’s case with reference to its return, i.e., the statement of income, per which a total of Rs.92.52 lacs was claimed (PB pg.21); the furnishing of the original TDS certificates before the Assessing Officer (A.O.) (vide letter dated 23.08.2011/PB pgs.22-23); the party (deductor) wise details of the total tax deducted (PB pgs.24-25); and, finally, the fact that the entire income on which the tax stands deducted (Rs.39,68,51,948/-), stands booked as its income for the relevant year. The assessee having thus done all that was within its means to claim credit in respect of the tax deducted on its income, could not be legally denied a claim in its respect.

3.2 The Id. Departmental Representative (DR), on the other hand, would rely on the impugned order; the Id. CIT(A) having issued directions to the A.O. for allowing credit in respect of TDS in accordance with the law and the applicable provisions as to procedure, *qua* which no infirmity has been pointed out by the assessee.

4. We have heard the parties, and perused the material on record.

4.1 The assessee has, as it appears to us from the income tax computation form, forming part of the order u/s.143(3) dated 29.12.2011 (copy on record), been allowed

credit in the sum of Rs.67,98,828/- toward TDS for the relevant year, so that there is apparently a short deduction for a sum of Rs.24,53,334/-, i.e., as claimed before the Id. CIT(A), even as the amount of short fall has not been specified by the assessee per its grounds of appeal.

4.2 The directions by the Id. CIT(A), under challenge before us, are clear and explicit. If, therefore, the credit is not being able to be allowed to the assessee on account of some procedural restrictions, as for example the circulars or instructions or guidelines in the matter issued by the CBDT, or the rules made in this behalf, his order as an appellate authority cannot be faulted for the same. As far as we can gather; the assessee having not specified, perhaps justifiably, the reason/s for the short-fall in the credit allowed to it, i.e., despite furnishing the TDS certificates in full, i.e., with reference to its return of income, is due to the reason that credit stands allowed only to the extent of the credit reflected in the assessee's account in Form No. 26AS. It needs to be clarified here that earlier there was no proper procedure for verification by the Revenue, and a TDS certificate was by itself considered a sufficient proof of the tax specified therein as having been deducted and deposited for and on behalf of the deductee. The same, however, stands replaced and a mechanism since set up, so that a procedure is in place in the matter. Each deductor is required to return (on a quarterly/annual basis) the details of the tax deducted at source by him, i.e., under his Permanent Account Number (PAN), deductee-wise, also specifying the details of the tax deposited to the credit of the Central Government therein. The same gets verified at the end of the Department for the tax paid, and the deductees allowed credit accordingly. As such, while we admit and appreciate the assessee's predicament, we are equally appreciative and cognizant of the constraints placed on the A.O. and the Revenue's concerns in the matter. How can credit to be allowed to an assessee in excess of the amount reflected in his account (Form No. 26AS) for the relevant year, so that the same has to be necessarily restricted thereto.

4.3 The issue or the imbroglio, however, has to be resolved. We have given our careful and anxious consideration to the matter. In our view, though Form 26AS (r/w r.31AB and ss. 203AA and 206C(5)) represents a part of a wholesome procedure designed by the Revenue for accounting of TDS (and TCS), the burden of proving as to why the said Form (Statement) does not reflect the details of the entire tax deducted at source for and on behalf of a deductee cannot be placed on an assessee-deductee. The assessee, by furnishing the TDS certificate/s bearing the full details of the tax deducted at source, credit for which is being claimed, has in our view discharged the primary onus on it toward claiming credit in its respect. He, accordingly, cannot be burdened any further in the matter. The Revenue is fully entitled to conduct proper verification in the matter and satisfy itself with regard to the veracity of the assessee's claim/s, but cannot deny the assessee credit in respect of TDS without specifying any infirmity in its claim/s. Form 26AS is a statement generated at the end of the Revenue, and the assessee cannot be in any manner held responsible for any discrepancy therein or for the non-matching of TDS reflected therein with the assessee's claim/s. Where so, no doubt a matter of concern, is one which is to be investigated and pursued by the Revenue, which is suitably armed by law therefor. The plea that the deductor may have specified a wrong TAN, so that the TDS may stand reflected in the account of another deductee, is no reason or ground for not allowing credit for the TDS in the hands of the proper deductee. The onus for the purpose lies squarely at the door of the Revenue.

4.4 In our considered view, therefore, firstly, no infirmity attends the impugned order in-as-much as we subscribe to and endorse the directions by the Id. CIT(A) in the matter, i.e., in principle. However, as explained here-in-above, the Revenue is obliged to grant the assessee credit for the TDS of which he is able to satisfactorily prove to the A.O. the factum of deduction of tax at source and its deposit to the credit of the central government, subject of-course to the conditions of sections 198 and 199. The A.O. is accordingly directed to allow the assessee credit for the impugned shortfall, subject to the said verification/s and condition/s. We decide accordingly.

5. In the result, the assessee's appeal is allowed on the afore-said terms.

*Order pronounced in the open court on March 27, 2014*

Sd/-  
(I. P. Bansal)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 27.03.2014

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**