

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री आर. के. गुप्ता, न्यायिक सदस्य एवं श्री राजेन्द्र सिंह लेखा सदस्य के समक्ष
BEFORE SHRI R.K. GUPTA JUDICIAL MEMBER AND SHRI RAJENDRA SINGH
ACCOUNTANT MEMBER

आयकर अपील संख्या/ITA NO.8532/Mum/2011
(निर्धारण वर्ष / Assessment year: - 2007-08

Citicorp Finance (India) Limited, 5 th Floor, Plot C-61, Bandra Kurla Complex, G Block, Bandra East, Mumbai – 400 051.	बनाम / Vs.	The Addl. Commissioner of Income Tax, range 10(1), Aayakar Bhavan, Mumbai.
PAN:- AAABCC4881F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by	Shri A.V. Sonde
प्रत्यर्थी की ओर से / Respondent by	Shri Deepak Kumar Sinha

सुनवाई की तारीख / Date of hearing	5.09.2013
घोषणा की तारीख / Date of pronouncement	13.09.2013

आदेश / ORDER

PER RAJENDRA SINGH, AM

This appeal by the assessee is directed against the order dated 6.9.2011 of CIT(A) for the assessment years 2007-08. The dispute raised by the assessee in this appeal is regarding credit of TDS and allowability of interest on interest u/s 244 of the Income Tax Act.

2. The facts in brief are that the assessee in the assessment year 2007-08 had claimed total TDS of Rs. 215163912. Claim of Rs. 1,65,20,93,44/- has been made in the original return and further claim of Rs. 14,271,296 had been made in the revised return filed on 13.4.2009. Thereafter during

the assessment proceedings, the assessee had made further claim of Rs. 35,683,272/- vide letter dated 28.12.2010. The AO however gave the credit of TDS only to the tune of Rs. 118,960,393/-. The assessee disputed the matter in appeal and CIT(A), in the impugned order, directed the assessee to furnish all TDS certificate in original before the AO who was directed to verify the claim of credit of TDS and to allow TDS as per original challans available on record or as per details of such TDS available on computer system of the department. Aggrieved by the decision of CIT(A) the assessee is in appeal before Tribunal.

3. Before us the, learned AR for the assessee submitted that the AO was not allowing for the credit of TDS because of discrepancy with respect to credit shown in the form No. 26AS which is not correct. It was argued that the credit of TDS has to be given on the basis of TDS certificates and in case TDS certificates are not available, on the basis of details and evidence furnished by the assessee regarding deduction of tax at source. Reliance for the said proposition was placed on the judgment of Hon'ble High Court of Bombay in case of Yashpal Sawhney Vs. ACIT (293 ITR 539). Reference was also made to the recent judgment of Delhi High Court in case of Court On Its Own Motion Vs. CIT (352 ITR 273). In which the High Court directed the department to ensure that the credit is given to the assessee on the basis of details and evidences furnished, where the deductor does not upload the correct details in the form 26AS. The learned AR further pointed out that the new system of Form 26AS was applicable only from assessment year 2009-10 and was not applicable in case of the assessee. Therefore, it was requested that the department may be directed to allow the credit of TDS on the basis of TDS certificate or indemnity bond and on the basis of credit shown in the form 26AS. The learned DR on the other hand placed reliance on the orders of authorities below.

4. We have perused the records and considered the matter carefully. The dispute is regarding credit for TDS. The credit of TDS has been denied to the assessee on the ground that the claim for TDS was no reflected in the computer generated form 26AS. The difficulty faced by the tax payer in

the matter of credit of TDS had been considered by the Hon'ble High Court of Bombay in case of Yashpal Sahwney Vs. DCIT (Supra) in which it was held that even if the deductor had not issued TDS certificate, the claim of the assessee has to be considered on the basis of evidence produced for deduction of tax at source as the revenue was empowered to recover the tax from the person responsible if he had not deducted tax at source or after deducting failed to deposit with Central Government. Hon'ble High Court of Delhi in case of Court On Its Own Motion Vs. CIT (Supra) have also directed the department to ensure that credit is given to the assessee, where deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the department. Therefore, the department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor had not issued TDS certificates on the basis of evidence produced by assessee regarding deduction of tax at source and on the basis of indemnity bond. We, therefore modify the order passed by CIT(A) on this point and direct the AO to proceed in the manner discussed above to give the credit of tax deducted at source to the assessee.

5. The second dispute is regarding grant of interest on interest. It has been submitted by the learned AR for the assessee that the assessee was entitled for interest on the excess tax paid which had not been given to assessee and, therefore, from the due date of interest, further interest had to be allowed on the interest due. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. Vs. CIT And Others (280 ITR 643). The learned DR placed reliance on the orders of authorities below.

6. We have perused the records and considered matter carefully. The dispute is regarding grant of interest on delayed payment of interest. In case the assessee has paid excess advance tax or excess TDS, the assessee is liable for refund with interest and in case the interest is not granted on the due date, the assessee is liable for further interest on interest, in view of the Judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. Vs.

CIT and others (Supra). We, therefore, direct the AO to allow the assessee interest on interest if due as per law in the light of Judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. (Supra).

7. In the result appeal of the assessee is allowed.

Order pronounced on 13 -9-2013

Sd/-

(R.K. Gupta)
Judicial Member

Sd/-

(Rajendra Singh)
Accountant Member

SKS Sr. P.S, Mumbai dated 13.9.2013

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI