

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC”, BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.3765/Mum/2017
(Assessment Year :2011-12)

M/s. Reliance Hypermart Ltd., Now Merged with Reliance Commercial Land and Infrastructure Ltd., 5 th Floor, Court House Lokmanya Tilak Marg Dhobi Talao Mumbai – 400 002	Vs.	ITO 8(1)(2) Mittal Court, Nariman Point Mumbai – 400 020
PAN/GIR No.AACCE0622K		
Appellant)	..	Respondent)

Assessee by	Shri Madhur Agarwal
Revenue by	Ms. N. Hemalatha
Date of Hearing	04/10/2017
Date of Pronouncement	05/10/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-14, Mumbai dated 22/03/2017 for A.Y.2011-12 in the matter of order passed u/s.154 of the IT Act, 1961 wherein following grounds have been taken by the assessee.

- i) *The learned Commissioner of Income Tax-14 (hereinafter referred to as CIT(A)) erred in confirming the rectification order passed by the Assessing officer {hereinafter referred to as AO} under section 154 of the Act wherein TDS credit of Rs.44,82,512 granted earlier as per the assessment order was withdrawn vide rectification order under section 154 of the Act.*
- ii) *The learned CIT(A) failed to appreciate that the income in question was first offered in the hands of the appellant company (Reliance Hypermart Limited) and then pursuant to the Bombay*

High Court order, the income was offered by the resulting company, Reliance Fresh Limited.

Hi) The appellant prays that the withdrawal of TDS credit as confirmed by the

learned CIT(A), having regards to the facts already on record is totally unjustified and such action of the CIT(A) needs to be quashed.

2. The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit.

2. Rival contentions have been heard and record perused. The facts of the case are that the assessment in this case was completed u/s 143(3) of the IT Act on 21/3/2014. The assessee has claimed TDS credit of Rs 44,82,512/- and the amount refundable was Rs 44,88,018/-. The AO thereafter noted that the corresponding income as per TDS claimed in consequence to its demerger w.e.f. 1/4/2010 has not been offered and therefore the refund of Rs 44,82,512/- granted on the basis of TDS certificate is required to be withdrawn. Accordingly the A.O passed the order u/s 154 of the Act withdrawing the credit of TDS.

3. By the impugned order, CIT(A) confirmed the action of the AO by observing that the income is shown in the hands of different company, while the TDS claim is made in the hands of the assessee company

4. It was argued by learned AR that corresponding income with respect to which TDS has been deducted was earlier offered in the hands of the assessee company and thereafter due to the High Court order which is effective from 01/04/2010, the corresponding income as per TDS certificate was offered in the hands of demerged company. It was also brought to our notice that assessee has not claimed TDS relating to

income offered in the demerged company, therefore, AO was not justified in declining claim of TDS in the hands of the assessee company, when it was actually deducted in the hands of the assessee company by noting its PAN number. Reliance was placed on the decision of the Hon'ble Delhi High Court in the case of Relcom dated 16/01/2015 wherein under similar facts, the Hon'ble High Court held that assessee was eligible for credit of TDS even when corresponding income was not offered for tax.

5. On the other hand, learned DR relied on the order of the lower authorities.

6. I have considered rival contentions and carefully gone through the orders of the authorities below and found from record that originally the assessee company filed its original return of income on 30th September 2011 declaring a loss of Rs.18,347.34 lakhs and claiming a refund of Rs.44,18,554 on account of TDS and TCS. Under a Scheme of Arrangement {'the Scheme'}) under Sections 391 to 394 of the Companies Act, 1956 sanctioned by the Hon'ble High Court of Judicature at Bombay vide Order dated 14th October, 2011 inter alia, the trading undertaking of Reliance Hyper Realty Ltd. was demerged into and vested with Reliance Fresh Limited, the assessee's company's holding company. The Scheme became effective on 1st December 2011, the appointed date being 1st April, 2010. The effect of the scheme was considered in the revised financial statement for the year ended 31st March, 2011 and accordingly revised Income Tax Return (ITR) was filed on 31/03/2012.

7. In order to give effect to the above scheme, a revised return of income was filed declaring a loss of Rs.14,17,785/- and a refund of Rs.45,03,858/- on account of TDS and TCS. The assessee company continues to operate its investment undertaking and makes investments in various companies like organized retail industry and creating and operating retail stores including construction of malls. The investment division of Reliance Hypermart was later merged with Reliance Commercial Land and Infrastructure Limited vide the Bombay High Court order dated 22nd March 2013 with effect from 1st April 2012. Since there is always a time lag between date of filing of scheme, approval of scheme and appointed date, the Company keeps on carrying-on its normal business activities relating to all its undertakings (ie: both retained and demerged undertakings) and all the transactions are recorded in the books of the Company. In the present case, all transactions till 30.11.2011 were first recorded in the Company's books. On filing of the Scheme with RoC, the Scheme became effective and therefore, the Company identified the income and expenditure pertaining to the demerged undertaking for the period April 2010 to March 2011 and passed a journal entry in its books on 30.11.2011 for giving effect to the Scheme. Consequently, the Company filed its original return of income on, due 'date for A.Y. 2011-12 on 30.09.2011, claiming IDS of Rs.44,18,554/- and after the accounting entries on merger have been completed, a revised return of income was filed on 31.03.2012, claiming TDS of 45,03,858/-. in which only the income and expenditure of retained undertakings were reported

and income and expenditure of demerged undertaking was included in the resulting company i.e. Reliance Fresh Limited,

8. From the record I found that though the income in respect of which TDS has been claimed had been transferred to the resulting company, however TDS could not be transferred to the resulting company as the scheme became effective on 1st December 2011 (the appointed date being 1st April 2010) and all the TDS certificates were received in name of the Assessee & all of them bears the PAN of the Assessee AADCR6588G, and it was appearing in Form 26AS of Reliance Hyper Realty Ltd.

9. I further found that since all the transactions relatable to trading undertaking were transferred to resulting company (Reliance Fresh Ltd). The Income on which TDS is claimed by the Assessee company has been booked in the books of Reliance Fresh Ltd. {the Resulting Company}. However, the other divisions of the company continued and since Reliance Hyper Realty Ltd. was in existence, such TDS was claimed in the Return of Income of Reliance Hyper Realty Ltd. Confirmation was provided during the assessment proceedings that though trading income has been transferred to Reliance Fresh Ltd., the corresponding TDS has not been transferred and credit for such TDS is being claimed by Reliance Hyper Realty Ltd. and not being claimed by Reliance Fresh Ltd.

10. With regard to eligibility of assessee to claim credit of TDS without offering corresponding income has been deleted by Hon'ble Delhi High Court in the case of Relcom (supra) and observed as under:-

6. Having heard the submissions made on behalf of the revenue and after a perusal the orders passed by the CIT(A) and the ITAT, we are of opinion that the said orders do not call for any interference and were warranted and justified in the facts and circumstances of the case. Before we proceed to elaborate on our reasons for the same, a perusal of Section 199 of the Act is necessary. Section 199 reads as follows: . .

"199. Credit for tax deducted.

(1) Any deduction made in accordance with the foregoing • provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given."

7. The revenue relies" on the phrase "shall be treated as a payment of tax on behalf of the person from whose income the deduction was made" to contend that the assessee's TDS claim cannot be based on the receipts of M/s REPL. However, the assessee fairly admitted throughout the proceedings for its TDS claim of 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister concerns and M/s REPL has not raised any objection with regard to the assessee's TDS claim of Rs.1,20,73,097/-.

8. This Court's reasoning is supported by a ruling of the Division Bench of the Andhra Pradesh High Court in CIT v. Bhooratnam, (2013) 357 1TR 196 (AP), where the Court noted as follows:

"In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, •whether the said certificate is issued in the name of the Joint Venture or in the name

of a Director of the assessee company. They have considered the terms of the agreement dated 12-03-2003 among the parties to the joint venture and held that credit for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has notified return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee.[^]

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The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law. "(emphasis supplied)

9. At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee.

10. This Court relies upon the well-settled dictum that procedure is the handmaid of justice, and it cannot be used to hamper the cause of justice [Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272]. Therefore, the revenue's contention that the assessee, instead of claiming the entire TDS amount, ought to have sought a correction of the vendor's mistake, would unnecessarily prolong the entire process of seeking refund based on TDS credit.

11. In light of the aforesaid reasons, the question of law framed is answered against the revenue and the appeal is accordingly dismissed.

11. Applying the proposition of law laid down by Hon'ble High Court to the facts of the instant case, I do not find any merit in the action of the AO for declining credit of TDS in the hands of the assessee company when undisputedly no credit of TDS has been claimed in the return of resulting

company on demerger i.e., Reliance Fresh Limited and confirmation to this effect was also provided during the assessment proceedings that though trading income has been transferred to Reliance Fresh Ltd., the corresponding TDS has not been transferred and credit for such TDS is being claimed only by the assessee i.e., Reliance Hyper Realty Limited and not being claimed by the Reliance Fresh Ltd.,

12. In view of the above, I direct the AO to allow the credit of the TDS so deducted in the hands of the assessee company. I direct accordingly.

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

Order pronounced in the open court on this 05/10/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 05/10/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai