आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTNAT MEMBER
&
SHRI T.R.SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 178/Ahd/2021
(निर्धारण वर्ष/Assessment Year : 2018-19)

Mirant Navinbhai Parikh 24, Ami Society Diwalipura Old Padra Road Baroda – 390 007	**बनाम**/ Vs.	The DCIT Circle International Tax, Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAOPP 6660 M**		
(अपीलार्थी/**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से/ **Appellant by :**	Shri Dhinal Shah, AR
प्रत्यर्थी की ओर से/**Respondent by:**	Shri Alpesh Parmar, Sr.DR

सुनवाई की तारीख/ **Date of Hearing**	04/04/2022
घोषणा की तारीख /**Date of Pronouncement**	22/04/2022

आदेश / O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)–13, Ahmedabad [CIT(A) in short] relating to the Assessment Year (AY) 2018-19 as against the intimation passed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts of the case is that the assessee is an individual and also non-resident. The assessee submitted before the CIT(A) that he had inherited movable and immovable properties of his late father Dr.Navinbhai Parekh, who expired on 17.2.2017. The assessee is the

only legal heir of his late father since his mother also pre-deceased. Hence, the entire estate of his late father and income thereon is filed by the assessee for the AY 2018-19 in his individual capacity. The major income derived from "income from other sources"; namely, bank deposits from Bank of Baroda and NSC. The assessee's father had deposits with Bank of Baroda on which interest income of Rs.13,04,682/- was accrued during the AY 2018-19 with TDS of Rs.1,34,220/-. However, the TDS certificate carrying the PAN of assessee's late father Dr.Navinbhai Parikh. However, the assessee offered other incomes and interest income of Rs.13,04,682/- for taxation in his return of income for the AY 2018-19 and paid balance tax thereon.

2.1. The return of income was processed by the Centralized Processing Center (CPC), Bengaluru by order dated 12/04/2019 and intimation u/s.143(1) of the Act was passed, whereby denying TDS amount from Bank of Baroda of Rs.1,34,220/- and also demanded tax of Rs.1,57,610/-.

3. Aggrieved against this intimation, the assessee filed an appeal before the Ld.CIT(A)-13, Ahmedabad and the Ld.CIT(A) dismissed the assessee's appeal by observing as under:

> *"4.2. Though the appellant has furnished the computation of total income he has not furnished the copy of return of income filed and thus it is not verifiable as to how the bank saving interest of Rs.58,715/-, bank deposit interest of Rs.13,04,682/-, deposit interest of Rs.37,508/- and interest from NSC of Rs.689/- all pertaining to Shri N B Parikh, the deceased father of the appellant, as mentioned in the computation of total income, was declared in the return of income filed by the appellant. The order dated 12.04.2019 u/s.143(1) shows income from other sources at Rs.20,76,159/- as per the return of income and computes the*

gross total income at Rs.20,96,395/- as per the return of income and allows credit of TDS of Rs.59,278/- as against TDS claim of Rs.1,93,498/- in the return of income and of self assessment tax of Rs.2,70,000/- as per the return of income and thus determines the further tax payable of Rs.1,57,610/- by the assessee. As during the processing u/s.143(1) only the TDS in the case of the appellant could have been given credit, the TDS in the case of appellant's deceased father could not be treated as prepaid tax in the case of the appellant and included in the order impugned in appeal. To this extent, the order dated 12.04.2019 u/s.143(1) cannot be said to have any error.

4.3 It is not clear as to why the return in the case of Shri N B Parikh, the deceased father of the appellant was not filed separately as Estate/Legal Heir of Late Shri N B Parikh. There appears to be no provision under this Act (Chapter V of the Act) that the income of the deceased father can be either be income by/of the son/inheritor or be owned up/clubbed with the income of the son/inheritor. Even Section 65 of the Act does nto appear to support the case of the appellant. As per provision of sec.159 of the Act, the appellant can be a legal representative of the deceased father but the proceedings under the Act shall be a separate proceeding – separate from the proceedings in the case of the appellant himself. Sec.159 does not make a case of clubbing and does not apply for the purpose of appeal under consideration.

4.4. However the appellant may have approached the AO u/s.154 for rectification of the order dated 12.04.2019 u/s.143(1). No such claim has been made in the submission.

4.5. Now for the purpose of appeal under consideration the issue is whether the TDS deducted in the case of Shri N B Parikh, the deceased father of the appellant should be allowed as prepaid tax in the hands of the appellant because the income of the deceased father has been declared by the appellant in his return of income. In this regard the only case law, Naresh Bhavani Shah (2017) 396 ITR 0589 (Guj.), quoted by the appellate in his submission, does not protect and help the appellant as the facts in the issues are totally different and distinguishable. However in view of the circumstances narrated Para 4.2 and 4.3 above and the fact that the TDS can be given credit only against the income of the person from whom the TDS

was deducted. The income of the deceased father does not become the income of the appellant and as it is an inheritance and a capital receipt in the hands of the appellant. The relief sought by the appellant that the TDS in the case of deceased father should be allowed as prepaid tax credit in the hands of the appellant cannot be allowed."

4. Aggrieved by the order of the Ld.CIT(A), assessee is now in appeal before us with the following grounds of appeal:

1. *The order passed by the Hon'ble Commissioner of Income Tax (Appeals) [CIT(A)] is erroneous and contrary to the provisions of law and facts and therefore requires to be suitably modified. It is submitted that it be so done now.*

2. *The Hon'ble CIT(A) has erred in law and on facts upholding action of Learned AO in restricting the credit for TDS to Rs.59,278 as against Rs.1,93,498 claimed by the appellant in the return of income, thereby granting short credit of TDS to the extent of Rs.1,34,220. It is submitted that it be so held now.*

   The Hon'ble CIT(A) erred on facts in not appreciating that the short credit of TDS of Rs.1,34,220 pertains to the TDS credit of deceased father of the appellant whose corresponding Interest income of Rs.13,42,190 has already been offered to tax by the appellant while filing his return of income for AY 2018-19. It is submitted that it be so held now.

   The Hon'ble CIT(A) erred in not appreciating that once income has been offered to tax and accepted by the department, corresponding credit for the taxes deducted therefrom ought to be allowed to the appellant. It is submitted that it be so held now.

3. *The Hon'ble CIT(A) has erred in not directing Learned AO to reduce the income of Rs.13,42,190 which holding it to be capital receipt.*

3.1 Without prejudice to above, as stated in para 4.3 of the Hon'ble CIT(A)'s order that there is no provisions under the Act of declaring the deceased father's income in the hands of the appellant is correct and according to the provisions of the

law, then the learned AO be directed not to consider the income of the deceased father in the hands of the appellant. It is submitted that it be so held now.

4. The AO has erred in charging interest under section 234B of the Act at Rs.23,641/- as against correct amount of Rs.5,189/-. It is submitted that it be so held now.

4.1. The AO has erred in charging interest under section 234C of the Act at Rs.19,257/- as against correct amount of Rs.12,644/-. It is submitted that it be so held now.

5. The Ld.counsel for the assessee Shri Dhinal Shah appearing for the assessee submitted that when the income of the late father of the assessee, a sum of Rs.13,42,190/- which has been accepted by Revenue, the corresponding TDS is denied to the assessee on the ground that mismatching of PAN of the assessee's deceased father. The assessee on admitting the amount of Rs.13 lakhs also paid self-assessment tax of Rs.2,70,000/- for the balance income of his late father. Therefore, the CPC Bengaluru is not correct in denying the TDS credit of his late father. Inadvertently, the assessee being a non-resident failed to instruct the Bank of Baroda about the change in PAN for his late father. Thus, the assessee cannot be denied the benefit of TDS made by the Bank of Baroda and pleaded to allow the TDS credit and allow the appeal in favour of the assessee.

6. Per contra, the Ld.DR appearing for the Revenue supported the orders of the lower authorities and requested to confirm the same.

7. We have given our thoughtful consideration and perused the material available on record. In the instant case, we find that when the Fixed Deposit of income of Rs.13,42,190/- which was the income of the deceased father of the assessee, but offered by the assessee in

his individual's hands being the sole legal heir of deceased father, the Revenue cannot deny the benefit of TDS made in the hands of the assessee's father.

7.1. It is worthy to note here that the First and Second Proviso to section 143(1) of the IT Act, 1961.

"Assessment

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(*a*) the total income or loss shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the return;

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

.....

.....

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:"

7.2. Though Section 143(1)(a) provides either arithmetical error in the return or incorrect claim in the return which can be adjusted in section 143(1)(a) proceedings, if the assessee is being given an opportunity of before making such an adjustment either in writing or in electronic mode, as provided under the first proviso and if no response is received within thirty years from the assessee on such intimation, the CPC Bengaluru can proceed with making such an adjustment/disallowances. However, these provisos are not exercised in many of the intimation orders passed by the CPC, Bengaluru. If such an intimation as provided in the 1st Proviso to section 143(1)(a)

of the Act, ought to have been given to the assessee, the assessee ought not to have been travelled with this length of litigation upto the Tribunal. The Ld.CIT(A) also, in his impugned order, raising a question why the assessee has not filed a separate return as estate of legal heir of late Dr.N.B.Parikh. Thus, the Ld.CIT(A) also failed to consider that as per section 159 of the Act, the legal heir is supposed to file the return of income. The assessee is the only legal heir of his deceased father and his mother is also pre-deceased her husband. The assessee's father is died on 17/02/2017 and the present AY is 2018-19. Being a single legal heir, the assessee also being a NRI filed the entire income in his hands and he cannot be denied the benefit of TDS on fixed deposit income made in his father's name. Therefore, the finding arrived at by the Ld.CIT(A) is legally not correct and we set aside the same and direct the CPC Bengaluru to provide the TDS credit in the name of his late father to the assessee.

7.3. Further, the Ld.CIT(A) is also not correct in holding that Hon'ble Jurisdictional High Court decision in the case of Naresh Bhavani Shah (HUF) vs. CIT reported in (2017) 396 ITR 0589 (Guj.) = (2017) 84 taxmann.com 53 (Gujarat) and the ratio of the said judgement is totally different and is distinguishable. For better understanding, the judgement of the Hon'ble Jurisdictional High Court in the case of Naresh Bhavani Shah (HUF) [supra] is reproduced hereunder:

"6. *As is well known, Chapter XVIIB of the Act pertains to tax deduction at source. This part contains detailed provisions for collection of tax at source and depositing with the government revenue and other related provisions. We may refer to the relevant provisions contained thereunder. Section 199 pertains to credit for tax deducted. Relevant portion thereof reads as under:*

"(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.

(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. *Under sub-section (1) of Section 200 any person deducting tax at source would pay within the prescribed time the said sum to the credit of the Central Government under sub-section (3) of Section 200 such person would file periodic statements of tax deducted at source. Sub-section (1) of Section 203 requires every person deducting tax at source to issue certificate to the deductee within the prescribed time. Section 206AA carries the title Requirement to furnish Permanent Account Number. Various sub-sections contained therein provide for supplying PAN by the deductee failing which tax will be collected at a higher rate. In case of invalid or not matching PAN also, similar circumstances would follow.*

8. *It can thus be seen that the Act contains detailed provision for collecting tax at source, depositing such tax with the government revenue and issuance of certificates to the deductee of such tax so deducted. The anxiety of the department, therefore, to ensure the credit of tax deducted at source is given to the rightful person in consonance with the certificate of TDS can easily be appreciated when large number of such transactions in any accounting year are likely to take place. The most dependable identification of the deductee would be his PAN which would be a unique identification number so far as an individual or an entity is concerned. The anxiety of the department therefore to ensure proper matching of the PAN in the TDS certificate as compared to the PAN of the assessee who claims the benefit of such tax deducted at source, therefore, cannot be lightly brushed aside. The short question is, In a genuine case like the case on hand, is the person remedyless?*

9. *It is in this context, the provision of Section 199 would come into play. As per sub-section (1) of Section 199 any deduction of tax at source would be treated as payment of tax on behalf of the person from whose income the deduction was made or the owner of the security or of the depositor or of the owner of the property or unit holder or the share holder as the case may be. Sub-section (3) of Section 199 however permits a deviation authorizing the power to make rules in respect of giving credit of tax deducted at source or the year during which the credit of such tax deducted at source should be granted. In exercise of such powers, Rule 37BA of the Income Tax Rules 1962 has been framed, relevant portion of which reads as under:*

"37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

(2) (i) If the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where---

(a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;

(b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;

(c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;

(d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset :

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).

(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody."

10. *It can thus be seen that under sub-rule 2 of Rule 37BA where whole or part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person and not to the deductee provided the three conditions contained therein are satisfied. These conditions in brief are that the deductee files a declaration with the deductor in this respect, such declaration would contain the details of the person entitled to the credit and the reasons for giving such credit and lastly the deductor issues certificate for deducting tax at source in*

the name of such a person. In the present case, the petitioner could have applied to RBI in terms of sub- rule 2 of Rule 37BA and completed the procedure envisaged therein. However, one can gather that there is no dearth of power with the department to grant credit of tax deducted at source in such a genuine case. We are not suggesting that the requirements of sub-rule 2 are not to be followed before such benefit can be granted. Invariably in all cases such procedure would have to be completed before a person can rightfully claim credit of tax deducted at source where the TDS certificate shows the name and PAN of some other person.

11. *In the present case, however, many years have passed since the event arose. The facts are not seriously in dispute. The HUF has already offered the entire income to tax. The department has also accepted such declaration and taxed the HUF. In view of such special facts and circumstances, we direct the department to give credit of the said sum of Rs.5,42,800/- to the petitioner HUF deducted by way of tax at source upon Shri Naresh Bhavanji Shah filing an affidavit before the department that the sum invested by the RBI does not belong to him, the income is also not his and that he has not claimed any credit of the tax deducted at source on such income for the said assessment year."*

7.4. On going through this judgement, it is crystal clear that there are provisions of under the IT Act; namely, section 199 of the IT Act, 1961 and Rule 37BA of the IT Rules, 1962 and proper mechanism is also provided under the Act and Rules. Thus, applying the ratio of the above judgement also, the assessee is entitled to get credit on TDS of Rs.1,34,220/- which was deducted in the PAN of his late father. However, the entire income is offered by the assessee in his individual capacity as sole legal heir. Apart from that, the assessee also paid self assessment tax of Rs.2,70,000/- on the above income. Thus, the grounds of appeal raised by the assessee; namely, Ground Nos.2 & 3 are allowed.

8. As far as ground Nos.4 & 4.1. of appeal are concerned, the same are charging of interest u/s.234B & 234C of the Act, which are consequential in nature and, hence, no separate adjudication is

required. Thus, these grounds of appeal raised by the assessee are allowed.

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

This Order ronounced in Open Court on	**22/04/2022**

Sd/-
(SMT. ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 22/04/2022

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-13, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad