

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 13/Kol/2022

Assessment Year: 2010-11

Dilip B. Desai.....Appellant
[PAN: ADPPD 7773 F]

Vs.

ACIT, Central Circle-4(2), Kolkata.....Respondent

Appearances by:

Smt. Ruchira Lakhotia, ACA, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT(D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : April 21st, 2022

Date of pronouncing the order : June 22nd, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2010-11 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-21, Kolkata [in short Id. "CIT(A)"] dated 11.11.2021 arising out of the assessment order framed u/s 154/251/147/143(3) of the Act dated 29.05.2019.

2. The assessee is in appeal before the Tribunal raising the following grounds:

“1. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) grossly erred in denying TDS credit amounting to Rs. 13,88,073/- without appreciating the fact that income, corresponding to the aforesaid TDS amount, has duly been credited to profit and loss account and offered to tax by the assessee in its return of income for the year under consideration.

2. That on the facts and in the circumstances of the case, Ld. CIT(Appeals) grossly erred in stating that TDS has been claimed by the assessee on the income of the firm without appreciating the fact that the firm (D.B. Desai & Associates) was incorporated on 01-04-2010 and prior to that it was represented by its proprietor Dilip B Desai as an individual and not as Partnership Firm.

3. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals), was not justified and erred in law in not deleting excess levy of interest u/s 234C amounting to Rs. 68,609/-levied vide Order u/s 154/251/143(3)/147 dated 29-05-2019.

4. That the appellant craves leave to add, to amend, modify, rescind, supplement, or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”

3. Brief facts of the case as culled out from the records are that the assessee is an individual and engaged in service industry. Assessment was completed u/s 143(3) r.w.s. 147 of the Act dated 29.05.2019. Thereafter, an application u/s 154 of the Act was filed by the assessee stating that a short claim of TDS deducted at source at Rs. 15,23,292/- has been awarded to the assessee. It was stated that inadvertently the clients of the assessee who are deducting tax at source and depositing it under the PAN Number of the assessee, wrongly mentioned PAN Number of the partnership firm newly incorporated on 01.04.2010 in the quarterly TDS return filed for quarter ‘4’ of Financial Year (in short “FY”) 2009-10. Due to this reason the tax deducted by the deductors was wrongly reflected in the PAN of the partnership firm and the credit was not given to the individual assessee.

4. Aggrieved, the assessee preferred appeal before ld. CIT(A) for allowing the said claim and partly succeeded.

5. Now the assessee is in appeal before this Tribunal raising the solitary grievance in ground nos. 1 & 2 that credit of tax deducted at source at Rs. 13,88,073/- should be provided to the assessee under the individual PAN "ADPPD 7773 F" and necessary directions may please be given to the ld. Assessing Officer (in short ld. "AO") to do the needful.

6. Per contra ld. D/R vehemently argued supporting the orders of both the lower authorities.

7. We have heard rival contentions and perused the records placed before us. The grievance of the assessee in ground nos. 1 & 2 of the instant appeal is that the credit of tax deducted at source of Rs. 13,88,073/- has not been awarded to the assessee against the tax payable for AY 2010-11.

8. We note that the assessee is an individual engaged in the service industry having PAN "ADPPD 7773 F". Up to FY 2009-10 (AY 2010-11), the assessee was operating under his individual PAN and the name of his sole proprietorship concern is "D.B. Desai & Associates". On the payments received by the assessee, tax is regularly deducted at source by the deductors which mainly includes corporate clients.

9. From 01.04.2010 the business of the assessee was converted from sole proprietorship concern to newly incorporated partnership concern in the name of "D.B. Desai & Associates" and PAN allotted to it is "AAHFD 1697 D". Since the business was

shifted to the partnership firm from 01.04.2010 all the relevant information including the PAN of the newly incorporated partnership firm was informed to the clients/deductors of tax at source. On perusal of the Form-16A placed in the paper book and Form-26AS it is revealed that inadvertently some of the deductors while filing the quarterly return for January to March, 2010 in place of the PAN of the assessee for the work done during FY 2009-10, mentioned the PAN of the new partnership firm and as a result of which the credit of tax deducted at source reflected in the PAN of the partnership firm and not under the PAN of the individual. Though in the beginning of the proceedings before the ld. AO amount in dispute for credit of TDS not granted was Rs. 37,27,350/- and after getting part relief from the ld. AO and part relief from the ld. CIT(A) remaining amount in dispute is only Rs. 13,88,073/-.

10. It is not in dispute that the partnership firm M/s. D.B. Desai & Associates was incorporated on 01.04.2010 and therefore, no income was earned by the firm prior to 01.04.2010. Before 01.04.2010 all the income was taxed in the hands of the individual under the PAN "ADPPD 7773 F". Since no income has been earned by the partnership firm and the alleged amount of TDS is prior to the date of incorporation of the firm, the credit needs to be given to the individual i.e. the assessee against the tax liability for AY 2010-11.

11. We, therefore, under the given facts and circumstances of the case, direct the ld. AO to examine the facts and veracity of the claim of credit of TDS at Rs. 13,88,073/- and if the assessee is able

to demonstrate that the gross amount on which the tax has been deducted at source has been reflected in the regular books of account and audited financial statement of the individual assessee as a revenue then the credit of the TDS amounting to Rs. 13,88,073/- should be granted to the assessee. We direct the assessee to provide details of the tax deducted at source at Rs. 13,88,073/- and the details of tax deductors, bills raised by the assessee for such deductions and the same being incorporated in regular books of account. Needless to mention that proper opportunity of being heard should be provided to the assessee. Thus, ground nos. 1 & 2 raised in this appeal are allowed for statistical purposes.

12. Ground no. 3 is consequential in nature and ground no. 4 is general in nature which needs no adjudication.

13. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Kolkata, the 22nd June, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Dated: 22.06.2022

Bidhan (P.S.)

Sd/-

[Manish Borad]
Accountant Member

Copy of the order forwarded to:

- 1. Dilip B. Desai, Constantia, B Wing, 7th Floor, 11, Dr. U.N. Brahmachari Street, Kolkata- 700 017.**
- 2. ACIT, Central Circle-4(2), Kolkata.**
3. CIT(A)-21, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata