

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 403/Kol/2022
Assessment Year: 2008-09

Machine Tools India Ltd. (PAN:AABCM 9740 R)	Vs.	ACIT, Circle-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	04.01.2023
For the Appellant/ निर्धारिती की ओर से	Mita Rizvi, CA
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 13.06.2022 for the AY 2008-09.

2. The only issue raised by the assessee in the various grounds of appeal is against the order passed by the Ld. CIT(A) upholding the action of AO in restricting the credit of TDS to Rs. 6,02,319/- out of total TDS gain of Rs. 14,46,276/- thereby short granting TDS to the tune of Rs. 8,43,887/-.

3. Facts in brief are that the assessee filed return of income on 30.09.2008 claiming refund of Rs. 70,468/- after claiming the credit for TDS deducted at source of Rs. 14,46,276/-. However it was found by the assessee through online e-filing portal of Income Tax Department that a demand of Rs. 17,18,622/- has been raised vide demand not no. 2016200810000588691C by denying the credit of TDS to the tune of Rs. 8,43,847/-. Thereafter the assessee moved a rectification petition before ACIT, Circle-2(1), Kolkata on 09.03.2017 attaching therewith all TDS certificates along with copy of statement giving comprehensive details of TDS of Rs. 14,46,276/- as claimed in the return of income and requesting to allow the full claim of TDS to the assessee. However vide letter dated 12.07.2018 the AO intimated the assessee that claim has been rightly allowed to the extent of Rs. 6,02,389/- instead of Rs. 14,46,276/- due to mismatch of NSDL data. Once again vide letter dated 18.07.2018 the assessee filed TDS certificates of Rs. 14,46,276/- along with details of deductors such as names and addresses and TAN of deductors, amount of TDS etc however no communication was received. Again the assessee moved a rectification petition on 18.02.2019 u/s 154 but to no avail. Thereafter the assessee filed a grievance petition with CP Grams on 28.01.2020 stating the facts of case and requesting to resolve all the disputes by directing the AO to allow TDS of Rs. 14,46,276/- as per TDS certificates filed by the assessee before the AO. Vide letter dated 16.07.2017 the AO intimated the assessee that TDS credit is restricted to Rs. 6,02,389/- only in view of NSDL data mismatch. Thereafter the assessee again moved a request dated 19.08.2020 online but to no avail.

4. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A). The appeal was also dismissed by the appellate authority by simply stating that no documentary evidences were produced in support of claim of TDS of Rs. 14,46,276/-.

5. After hearing the rival contentions and perusing the material on record including the impugned order, we observe that issue pertains to short granting of credit in respect of TDS to the tune of Rs. 8,43,887/-. We observe from the records

before us that assessee has claimed total TDS of Rs. 14,46,276/- which was supported with original TDS certificates as noted in the facts above. The assessee moved several applications before the AO and also before the CBDT but to no avail. We observe every time the assessee has proved the deduction of TDS and also the deposit of the same within the due time by the deductors before the authorities but to no avail. Even the Ld. CIT(A) simply dismissed the appeal of the assessee in a mechanical manner by citing the reason that there is mismatch in NSDL data for no evidences were proved. We are mindful of the fact that this has happened due to mismatch of NSDL data and the AO restricted the claim of the TDS to Rs. 6,02,319/- despite the fact that the assessee furnished TDS certificates proving that the total TDS deducted on his behalf of Rs. 14,46,276/- along with the requisites documents such as names and addresses of deductors, TANs, granting of deduction etc. which sufficiently proved that the TDS was deposited by the deductors and deposited within the due time. It is the duty of AO to examine the issue on the basis of evidences filed and allow the credit to the assessee after doing necessary verification. We have also examined the TDS certificates which are placed before us and observe that the assessee is entitled to credit of Rs. 14,46,276/-. We also find support from the decision of Hon'ble Delhi High Court in the case of Own Motion and Ors. Vs. CIT & Ors. In [2013] 352 ITR 273 (Delhi) wherein the Hon'ble High Court has held as under:

50. It is unfortunate that the Board did not take immediate steps after even noticing lacuna and waited till Finance Act, 2012, when Section 234E was enacted. Mere writing of a letter by the Assessing Officer to the deductor by no stretch can be treated as sufficient action on the part of the respondents. Even this, it appears, was done in a few cases as the respondents in the counter affidavit have stated that they have written 20119 communications to the tax deductors, where TDS credit claimed by the taxpayers did not match with the details loaded by the deductors. The Act empowers and authorises the Assessing Officer to verify the contents of the return and notices can be issued to a third party, i.e. the deductor, to furnish information and details. The deductor, the principal officer or person responsible for making deduction, once issued notice to appear, in most cases, would like to comply with the statutory requirements and also furnish details with regard to TDS deducted from the income of the assessee. The statutory powers given to the Assessing Officer are sufficient and should be resorted to and the assessee cannot be left to the mercy or the sweet will of the deductors. Therefore, we direct that when an assessee approaches the Assessing Officer with requisite details and particulars, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting

point for the Assessing Officer to ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle in case he requires clarification or confirmation. He is also at liberty to get in touch with deductor by issuing a notice and compelling him to upload the correct particulars/details. The said exercise must be and should be undertaken by the Revenue, i.e. the Assessing Officer as an assessee who suffers in such cases is not due to his fault and can justifiably feel deceived and defrauded. We do not accept the stand of the Revenue that they can only write a letter to the deductor to persuade him to correct the uploaded entries or to upload the details. Power and authority of the Assessing Officer, cannot match and are not a substitute to the beseeching or imploring of an assessee to the deductor. The directions given above, are in accord with the provisions of the Act, namely, Section 133 and TDS provisions of the Act. If required and necessary, the income tax authorities can obtain prior approval from the Director or the Commissioner. The authorities can also examine whether general approval can be given. The said exercise is undertaken by the Assessing Officer while verifying or examining the return. Section 234E will also require similar verification by the Assessing Officer. In such cases, if required, order under Section 154 of the Act may also be passed. Circular No. 4 of 2012 will be equally applicable. This is the seventh mandamus which we have issued.”

We also note that CBDT has issued instruction from time to time to the AO's qua the manner of processing the return and giving TDS credit. The Hon'ble Delhi High Court in its above judgment issued seven mandamuses for necessary action of Income Tax Department, one of which is regarding the issue of non-credit of TDS to the taxpayer due to TDS mismatch despite the assessee furnishing before the AO, TDS certificate issued by the deductor. The CBDT in view of the order of Hon'ble Delhi High Court issued instruction to the AO's to grant credit of TDS when the assessee furnished TDS certificate as evidence against any mismatch amount after verification. And if necessary AO may issue notice to the deductor to compel to file correction statement as per the procedure laid down. In view of the above legal position and CBDT Instruction, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to give credit to the assessee of full amount of Rs. 14,46,276/- as claimed by the assessee after examining the TDS certificates which may be furnished by the assessee. Needless to say once the TDS certificates are furnished by the assessee, AO is duty to give credit of TDS of Rs. 14,46,276/-.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 4th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 4th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Machine Tools India Ltd., 56A, Mirza Ghalib Street, Kolkata-700016.
2. Respondent – ACIT, Circle-1(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata