

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 33/Asr/2022
Assessment Year: 2016-17

Sh. Varinder Pal,
Shop. No. 6,
Lawrence Road,
Amritsar

[PAN: AFRPP 8995H]
(Appellant)

V. Income Tax Officer,
Ward-5(4), Amritsar

(Respondent)

Appellant by Mrs. Geetika Arora, C.A.

Respondent by Ms. Priyanka Singla, Sr. D.R.

Date of Hearing : 22.12.2022
Date of Pronouncement : 31.01.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 14.12.2021 in respect of Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

- “1. That the Worthy Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and on facts while upholding the Order dated 21.07.2020 passed by the Assessing Officer rejecting the application u/s 154 of the Act. 1961 resulting into denial of TDS Credit and confirming the demand of Rs. 45,430/- created u/s 143(1) of the Income Tax Act. 1961 dated 10.05.2017.
2. That the Worthy Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and on facts in confirming the above demand on account of non- allowance of TDS Credit of Rs. 36,008/- deducted in the name of deceased mother of the assessee while assessing the income of Rs. 3,53,057/- belonging to Smt. Mohinder Kaur (deceased mother of the assessee) in the income of the assessee for A.Y. 2016-2017 as he was one of the legal heir of his deceased mother thereby collecting taxes on the same income twice.
3. That the Worthy Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the erroneous observations of Ld. Assessing Officer and without appreciating the admitted facts that income on which TDS has been deducted had been offered for tax in the return of income filed by the assessee and assessed as such u/s 143(1) of the Income Tax Act, 1961 and therefore this TDS belongs to the assessee only and credit of TDS which merely appears in the name of deceased mother cannot change the entitlement of credit of TDS towards assessee.
4. That the Worthy Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has both erred in law and on facts in refusing to follow the decision of Smt. Vijay Luxmi Gupta (Through legal heir Shri Mukesh Gupta) Vs. Income Tax Officer, Ward- 1(4), Allahabad where it was held that credit of TDS cannot be denied merely because the TDS amount was wrongly deposited by the deductor in PAN of the deceased husband and in refusing to follow Rule 37 BA of Income Tax Rules.
5. That the Worthy Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred on the fact that the assessee has not communicated about death of his mother and change of

PAN to the deductor The assessee communicated the same to the deductor but the same was updated by the deductor in the next financial year. As such the assessee should not be made to suffer because of delay and procedural error on the part of the deductor.”

3. At the outset, the Ld. Counsel submitted that the appellant being the legal heir has offered the income of his deceased mother at Rs.3,53,057/- in his Income Tax Return and consequentially has paid additional tax of Rs.74, 295 (97492-23197) to the department. It was argued that admittedly the income on which TDS has been deducted had been offered for tax in the return of income filed by the assessee as assessed u/s 143(1) of the Income Tax Act, 1961 and therefore corresponding TDS deducted belongs to the assessee and credit of TDS. The Ld. Counsel contended that where the income of the deceased mother is offered for taxation, then the appellant is entitlement of credit of such TDS. In support, the LD. AR filed a brief note which reads as under:

“Your kind attention is drawn to the observation of Ld.CIT (A) in his order u/s 250, point 5.4, page no 30 of paper book where it is mentioned that “The appellant should have filed a declaration about the death of his mother to the deductor”.

Your honour will kindly appreciate that the declaration was duly filed by the appellant to the deductor. The same is evident from the fact that the TDS of Q-4 in case of Indian Overseas Bank is reflecting in Form 26AS of the appellant at Rs.4925/-and TDS of Q1 ,Q2 and Q3 are reflecting in Form 26AS of the deceased mother of the appellant. Also ATC Telecom infrastructure Pvt Ltd has updated the Pan of the appellant in his records in the next year i.e A/Y 2017-18. The Form 26AS of A/Y 2017-18 is enclosed in support thereof.

Your Honour, it is very humbly submitted that non updation of PAN or delay in updation of PAN by the deductor does not debar the appellant from claiming the TDS, particularly when the income is being assessed in his hands.

Your Honour, the revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. Since no Income Tax Return has been filed under the Pan of deceased mother and the appellant is also not allowed credit of TDS, does this mean that credit of TDS cannot be taken by anybody? This cannot be the spirit and intention of law.

It is finally submitted that there has been no loss of revenue to the department. The fact is explained as under:

The Net Taxable income of the appellant: **Rs.4,95,210**
(Excluding the Income of Deceased Mother)

Tax Due:	Rs. 23,197
T. D. S.	Rs 42,905
Refund	Rs 19,708

The Net Taxable income of the appellant:
(Including the Income of Deceased Mother)

Tax Due:	Rs.97,492/-
T. D. S.	Rs. 97,492
Self Asst Tax Paid	Rs. 22,960/-

The fact that the appellant being the legal heir has offered the income of his deceased mother at Rs.3,53,057/- in his Income Tax Return has resulted in additional tax of Rs.74,295 (97492-23197) or additional revenue to the department. The appellant as an honest taxpayer has offered the income of deceased mother thereby resulting in paying taxes at a higher tax slab should not be penalized.

Our above submissions supported by the Decision of Honorable Income Tax Appellate Tribunal- Allahabad in appeal of Smt. Vijay Luxmi Gupta (through legal heir Sh. Mukesh Gupta) vs. Income Tax Officer in ITA 262/ALLD/2018 for A.Y. 2011-12 dated 22.03.2021 and Decision of Honorable Income Tax Appellate Tribunal "SMC" Bench, Ahmedabad in appeal of Mirant Navinbhai Parikh vs. The DCIT, Circle International Tax in ITA No. 178/Ahd/2021 for A.Y. 2018- 19 dated 22.04.2022.

The above case laws are have already been placed on records vide page no. 31-48 of paper book.

You honour is requested to kindly refer the above facts also and give the relief to taxpayer and oblige.”

4. The Ld. DR stands by the impugned order, however, she was in agreement with the argument of the appellant in principle.

5. Heard both the sides and perused the relevant material on record. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has confirmed the finding of the AO on account of non- allowance of TDS Credit of Rs. 36,008/- deducted in the name of deceased mother of the assessee while assessing the income of Rs. 3,53,057/- belonging to Smt. Mohinder Kaur (deceased mother of the assessee) in hands of appellants for A.Y. 2016-2017. It is admitted facts on record that the appellant's deceased mother's income on which TDS was deducted had been offered for tax in its return of income and assessed u/s 143(1) of the Income Tax Act, 1961 and thus, the credit of TDS cannot be denied merely because it appears in the name of deceased mother. As per law and in principle the tax on particular income can be charged once only. In the instant case, the tax has already been deducted by way of TDS by the revenue and thus, the confirmation of the order of the lower authorities would be denial of TDS claim to the appellant would result into

double taxation of the same income. In our view, a particular income cannot be taxed twice under the law and therefore, as in the present case, the appellant is entitled for the credit of TDS deducted on the disputed income. Alternatively, the assessee shall be eligible to seek permission from the CIT to file belated return in the name of deceased person (Appellant's mother) for the claim of TDS under Rule 34BA of Income Tax Rules and thereby withdrawing the deceased's income shown in its return.

6. In the case of Smt. Vijay Luxmi Gupta (Through legal heir Shri Mukesh Gupta) Vs. Income Tax Officer, Ward- 1(4), (Supra) it was held that credit of TDS cannot be denied merely because the TDS amount was wrongly deposited by the deductor in PAN of the deceased husband and in refusing to follow Rule 37 BA of Income Tax Rules.

7. In the above view, we accept the grievance of the assessee as genuine. As such, we conclude that the assessee would not be made to suffer because of delay on the part of the deductor in updating PAN of the legal heir. Accordingly, the AO is directed to allow credit of the TDS claimed by the appellant on verification of form 26 issued for the relevant quarters of the financial year in the name of deceased person as per Rule 37 BA of Income Tax Rules.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 31.01.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order