

## **TDS Certificate to supersede Form 26AS in case of variation between two; ITAT comes to the rescue of assessee**

**Summary – The Mumbai ITAT in a recent case of LSG Sky Chef (India) (P.) Ltd., (the Assessee) held that assessee, by furnishing TDS certificates bearing full details of tax deducted at source, had discharged primary onus on it towards claiming credit in respect of tax so deducted.**

### **Facts**

- The assessee in its return of income claimed a sum of Rs.92.52 lakhs as credit of tax deducted at source. However, assessee was allowed credit in sum of Rs. 67.99 lakhs only.
- On appeal assessee claimed short deduction at Rs.24.53 lakhs. The Commissioner (Appeals) by his order directed the LAO to grant correct TDS credit in accordance with tax deducted and deposited by the deductors in the name of the assessee in accordance with circulars or instructions or guidelines in the matter issued by the CBDT, or the rules made in this behalf.
- On further appeal:

### **Held**

- As it appears from the income tax computation form, assessee has been allowed credit in the sum of Rs. 67.99 lakhs toward TDS for the relevant year, so that there is apparently a short deduction for a sum of Rs. 24.53 lakhs i.e., as claimed before the Commissioner (Appeals), even as the amount of short fall has not been specified by the assessee per its grounds of appeal.
- The directions by the Commissioner (Appeals), under challenge are clear and explicit. If, therefore, the credit is not being able to be allowed to the assessee on account of some procedural restrictions, as for example the circulars or instructions or guidelines in the matter issued by the CBDT, or the rules made in this behalf, his order as an appellate authority cannot be faulted for the same.
- The assessee having not specified, perhaps justifiably, the reason/s for the short-fall in the credit allowed to it, i.e., despite furnishing the TDS certificates in full, i.e., with reference to its return of income, is due to the reason that credit stands allowed only to the extent of the credit reflected in the assessee's account in Form No. 26AS. It needs to be clarified here that earlier there was no proper procedure for verification by the revenue, and a TDS certificate was by itself considered a sufficient proof of the tax specified therein as having been deducted and deposited for and on behalf of the deductee. The same, however, stands replaced and a mechanism since set up, so that a procedure is in place in the matter. Each deductor is required to return (on a quarterly/annual basis) the details of the tax deducted at source by him, i.e., under his Permanent Account Number

(PAN), deductee-wise, also specifying the details of the tax deposited to the credit of the Central Government therein. The same gets verified at the end of the Department for the tax paid, and the deductees allowed credit accordingly. As such, there are constraints placed on the Assessing Officer and the revenue's concerns in the matter. How can credit to be allowed to an assessee in excess of the amount reflected in his account (Form No. 26AS) for the relevant year, so that the same has to be necessarily restricted thereto.

- Though Form 26AS (read with rule 31AB and sections 203AA and 206C(5)) represents a part of a wholesome procedure designed by the Revenue for accounting of TDS (and TCS), the burden of proving as to why the said Form (Statement) does not reflect the details of the entire tax deducted at source for and on behalf of a deductee cannot be placed on an assessee-deductee.
- The assessee, by furnishing the TDS certificate/s bearing the full details of the tax deducted at source, credit for which is being claimed, has discharged the primary onus on it toward claiming credit in its respect. He, accordingly, cannot be burdened any further in the matter. The revenue is fully entitled to conduct proper verification in the matter and satisfy itself with regard to the veracity of the assessee's claim/s, but cannot deny the assessee credit in respect of TDS without specifying any infirmity in its claim/s.
- Form 26AS is a statement generated at the end of the revenue, and the assessee cannot be in any manner held responsible for any discrepancy therein or for the non-matching of TDS reflected therein with the assessee's claim/s. Where so, no doubt a matter of concern, is one which is to be investigated and pursued by the revenue, which is suitably armed by law therefor. The plea that the deductor may have specified a wrong TAN, so that the TDS may stand reflected in the account of another deductee, is no reason or ground for not allowing credit for the TDS in the hands of the proper deductee. The onus for the purpose lies squarely at the door of the revenue.
- Therefore, the revenue is obliged to grant the assessee credit for the TDS of which he is able to satisfactorily prove to the Assessing Officer, the factum of deduction of tax at source and its deposit to the credit of the Central Government, subject of course to the conditions of sections 198 and 199. The Assessing Officer is accordingly directed to allow the assessee credit for the impugned shortfall, subject to the said verification/s and condition/s.