

Full credit of TDS shall be available if entire income is assessable in current year due to cash method of accounting

Summary – The Delhi ITAT in a recent case of Chander Shekhar Aggarwal, (the Assessee) held that Assessee following cash system of accounting, would be entitled to credit of entire amount of TDS being offered as income in year of deduction

Facts

- The assessee adopted cash method of accounting. In the return filed for the assessment year 2011-12, he claimed credit of tax deducted at source [TDS] of Rs. 80 lakhs.
- The Assessing Officer allowed the credit of TDS of Rs. 71 lakhs.
- The Commissioner (Appeals) upheld the order of the Assessing Officer. She held that the credit of TDS was to be allowed in terms of rule 37BA(2). As such, the credit would be allowable on *pro rata* basis in the year in which the certificate was issued and also in future where balance of such income was found to be assessable as per the mandate of section 199. Any amount which had not been assessed in any year but referred in the TDS certificate could not be claimed under section 199.
- On appeal to Tribunal:

Held

Provisions of section 199

- Sub-section (1) of section 199 provides that 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. In view thereof, since the tax was deducted at source by the deductor and the amount was deposited by the deductor on behalf of the assessee, the said sum is deemed to be the payment of tax made on behalf of the assessee.

Provisions of section 198

- Also section 198 provides that all sums deducted in accordance with Chapter XVII-B shall, for the purposes of computing the income of an assessee, be deemed to be income received. Thus section 198 specifically provides that tax deducted at source shall for the purpose of computing income of an assessee will be deemed to be income received by the assessee.

Analysis of order of Commissioner (Appeals)

- In view of the aforesaid provisions of sections 198 and 199, there is no justification not to grant credit of TDS to the assessee from whose income such tax has been deducted by the deductor, more particularly when such TDS stands duly declared as income by the assessee. The conclusion of the Commissioner (Appeals) to grant proportionate credit is also not in accordance with the cash system of accounting followed by the assessee. The Commissioner (Appeals) in her order has laid much emphasis on rule 37BA.

Provisions of rule 37BA

- Rule 37BA(1) provides rules relating to have credit for the purpose of section 199 as is provided in section 199(3). Rule 37BA(3)(i) provides that credit for TDS and credited to the account of Central Government, shall be given for the assessment year for which such income is assessable. Thus, if the said rule is read, it is clear that the assessee is entitled to get credit of the TDS once such income is included in his income.

Consideration of case

- The admitted facts of the instant case are that the TDS has been offered as income by the assessee in his return of income.
- The TDS deducted by the deductor on behalf of the assessee and offered as income by the assessee in his return of income is to be allowed as credit in the year of deduction of TDS. Rule 37BA provides that credit for TDS should be allowed in the year in which income is assessable. Further clause (ii) of rule 37BA(3) provides that where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax. This rule is only applicable where entire compensation is received in advance, but the same is not assessable to tax in that year and is assessable in a number of years. However, such rule has no applicability, where assessee follows cash system of accounting.
- This can be supported from the illustration that suppose an assessee, who is following cash system of accounting, raises an invoice of Rs. 100 in respect of which deductor deducts TDS of Rs. 10 and deposits to the account of the Central Government. Accordingly the assessee would offer an income of Rs. 100 and claim TDS of Rs. 10. However, in the opinion of the revenue, the assessee would not be entitled to credit of the entire TDS of Rs. 10 but would be entitled to proportionate credit only. Now assumes that Rs. 90 is never paid to the assessee by the deductor. In such circumstances, Rs. 9 which was deducted as TDS by the deductor would never be available for credit to the assessee though the said sum stands duly deposited to the account of the Central Government.
- Rule 37BA(3) cannot be interpreted so as to say that TDS deducted by the deductor and deposited to the account of the Central Government is though income of the assessee but is not eligible for

credit of TDS in the year when such TDS was offered as income. This view is otherwise also not in accordance with the provisions contained in sections 198 and 199. The proposition as laid out by the Commissioner (Appeals), therefore, cannot be countenanced.

Conclusion

- In view of the aforesaid, the assessee would be entitled to credit of the entire TDS offered as income by him in his return of income.