

## **No addition on basis of 26AS if payee claimed that there was wrong entry in TDS return: ITAT**

**Summary – The Chennai ITAT in a recent case of P.K. Rajasekar, (the Assessee) held that where assessee claimed that there was wrong credit entry by payer-client in Form 26AS, Assessing Officer had to examine its genuineness**

### **Facts**

- The assessee had a business of laying cables. It received sum from company TTPL while filing TDS return, TTPL claimed that a sum of Rs. 1.26 lakh was paid to the assessee.
- The assessee claimed that out of the amount, a sum of Rs. 58.3 lakh was being credited to the assessee wrongly and actually the assessee received Rs. 64.84 lakh from TTPL. The assessee claimed that credit of Rs. 58.36 lakh was a wrong entry and TTPL had not filed revised TDS return electronically.
- The Assessing Officer addressed letter to TTPL. As said letter was not responded, the Assessing Officer treated the particulars contained in Form 26AS as correct and treated Rs. 58.36 lakh shown in form 26AS as undisclosed receipt by the assessee.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On further appeal to the Tribunal:

### **Held**

- Under the scheme of Income-tax Act, the assessee is expected to pay tax after completion of assessment. In order to ensure the recovery of tax, the Income-tax Act provides payment of tax in advance, before completion of assessment and also provides for deduction of tax at source. When the payer deducted the tax as per the scheme of the Income-tax Act in respect of the payment made by them, the amount deducted by the payer towards TDS has to be treated as payment of tax. If the assessee claims that there was wrong entry and wrong credit, the Assessing Officer has to examine the same with open mind and find out whether there was a genuine credit as found in Form 26AS. TTPL is also a tax payer in this country. Therefore, the revenue cannot shift the burden to the assessee on the ground that TTPL could not be contacted. TTPL is a company registered under the provisions of Companies Act and the Directors can very well be contacted by the Assessing Officer and find out what is the error in TDS return.
- Even though the burden of proof is initially on the shoulder of the assessee, the Assessing Officer is also equally responsible to find out whether the credit entry of Rs. 58.36 lakh is genuine or not. The Assessing Officer cannot take advantage of the ignorance or handicap of the assessee and say that there was undisclosed receipt by the assessee. When the assessee claims that the impugned entry is a wrong entry, the Assessing Officer in all fairness has to examine the same and find out whether

there was genuine entry or not. The Assessing Officer was conferred the power of civil court to examine and find out the real nature of transaction. If the Assessing Officer could not exercise the power conferred on him, it is not known how the individual citizen of this country will be able to find out the genuineness of the transaction. Therefore, in order to meet the ends of justice, this Tribunal is of the considered opinion that the Assessing Officer has to find out the address of TTPL and its Directors and thereafter find out whether so-called credit of Rs. 58.36 lakh a genuine transaction or it is a wrong entry. Thereafter, the Assessing Officer has to decide the same in accordance with law. Accordingly, the orders of the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material available on record and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.