

## HC slams AO for denying TDS credit to HUF merely because TDS certificates were issued in name & PAN of Karta

**Summary – The High Court of Gujarat in a recent case of Naresh Bhavani Shah (HUF), (the Assessee) held that where income on which tax has been deducted at source is assessable in hands of a person other than deductee, credit can be given to such other person provided three conditions contained in rule 37BA(2) are satisfied**

### Facts

- The assessee, a HUF, invested the funds belonging to the HUF in RBI taxable bonds. Inadvertently it made such investment in the individual name of the Karta of the HUF viz. 'N' and he was not described as the karta of the HUF. The Permanent Account Number (PAN) given to RBI also was that of 'N' in personal capacity and not that of the HUF.
- The RBI while deducting tax at source amounting to Rs. 5.42 lakhs on the interest income of such bonds issued TDS certificates in the name of 'N' carrying his PAN.
- The Assessing Officer while processing the return of the assessee for the assessment year 2012-13 under section 143(1) did not grant the weightage of TDS of Rs. 5.42 lakhs, since the PAN did not match.
- In view of such facts, the assessee wrote to the Assessing Officer and pointed out that the amount of Rs. 5.42 lakhs represented tax deducted at source on the income offered by it and the benefit of such tax deducted at source should be granted to it particularly when 'N' had no claim in such benefit.
- The Assessing Officer did not accept the case of the assessee.
- Thereafter the assessee filed a revision petition before the Commissioner stating that the income in relation to which the deduction of tax at source was made was that of the assessee-HUF. The HUF had filed return and offered such income to tax. Such return had been accepted by the Assessing Officer and the income had been duly taxed. 'N', karta of the HUF, in his personal capacity had filed a separate return in which such TDS was not claimed.
- The Commissioner rejected the revision petition holding that on account of the mismatch of PAN reflected in the TDS certificate and that of the assessee, the credit could not be granted. As per the prescribed procedure TDS credit could be given only to the assessee against whose PAN the tax was deducted.
- On writ:

### Held

- The source of the funds which came to be invested with the RBI was that of the HUF. The interest income, therefore, would belong to the HUF. At the same time, it is equally undisputed that the

investment was made in the name of 'N' in his individual capacity and not as a karta of the HUF. The PAN given to RBI was also that of the individual and, therefore, TDS was deducted by the RBI while paying interest to 'N' indicating his PAN.

- As is well known, Chapter XVIIIB of the Act pertains to tax deduction at source. This part contains detailed provisions for collection of tax at source and depositing with the Government revenue and other related provisions. Section 199 pertains to credit for tax deducted.
- Under sub-section (1) of section 200 any person deducting tax at source would pay within the prescribed time the said sum to the credit of the Central Government. Under sub-section (3) of section 200 such person would file periodic statements of tax deducted at source. Sub-section (1) of section 203 requires every person deducting tax at source to issue certificate to the deductee within the prescribed time. Section 206AA carries the title 'Requirement to furnish Permanent Account Number'. Various sub-sections contained therein provide for supplying PAN by the deductee failing which tax will be collected at a higher rate. In case of invalid or not matching PAN also, similar circumstances would follow.
- It can thus be seen that the Act contains detailed provision for collecting tax at source, depositing such tax with the Government revenue and issuance of certificates to the deductee of such tax so deducted. The anxiety of the department, therefore, to ensure the credit of tax deducted at source is given to the rightful person in consonance with the certificate of TDS can easily be appreciated when large number of such transactions in any accounting year are likely to take place. The most dependable identification of the deductee would be his PAN which would be a unique identification number so far as an individual or an entity is concerned. The anxiety of the department to ensure proper matching of the PAN in the TDS certificate as compared to the PAN of the assessee who claims the benefit of such tax deducted at source, therefore, cannot be lightly brushed aside. The short question is, in a genuine case like the case on hand, is the person remediless.
- It is in this context, the provision of section 199 would come into play. As per sub-section (1) of section 199 any deduction of tax at source would be treated as payment of tax on behalf of the person from whose income the deduction was made or the owner of the security or of the depositor or of the owner of the property or unit holder or the share holder as the case may be. Sub-section (3) of section 199, however, permits a deviation authorizing the power to make rules in respect of giving credit of tax deducted at source or the year during which the credit of such tax deducted at source should be granted. In exercise of such powers, rule 37BA of the Income Tax Rules 1962 has been framed.
- Under sub-rule (2) of rule 37BA where whole or part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person and not to the deductee provided the three conditions contained therein are satisfied. These conditions are that the deductee files a declaration with the deductor in this respect, such declaration would contain the details of the person entitled to the credit and the reasons for giving such credit and lastly the deductor issues certificate for deducting tax at source in

the name of such a person. Invariably in all cases such procedure would have to be completed before a person can rightfully claim credit of tax deducted at source where the TDS certificate shows the name and PAN of some other person.

- In the instant case, however, many years have passed since the event arose. The facts are not seriously in dispute. The HUF has already offered the entire interest income to tax. The department has also accepted such declaration and taxed the HUF. In view of such special facts and circumstances, the court directs the department to give credit of the said sum of Rs.5.42 lakhs to the assessee-HUF upon 'N' filing an affidavit before the department that the sum invested in the RBI does not belong to him, the income is also not his and that he has not claimed any credit of the tax deducted at source on such income for the relevant assessment year.