

## **Karta was eligible to claim TDS credit wrongly deposited in his name if HUF hadn't availed benefit of such TDS**

**Summary – The Nagpur ITAT in a recent case of Ratanlal Biharilal Atal, (the Assessee) held that where due to mistake, TDS related to HUF of assessee whereof assessee was karta was credited to assessee's TDS account, assessee could claim refund of such TDS credit, provided HUF had not availed benefit of such TDS certificate**

### **Facts**

- An agricultural land belonging to HUF of the assessee whereof assessee was Karta was acquired by the land acquisition officer (S.D.O.) for the purpose of development of airport and TDS was deducted under section 194LA on compensation paid for compulsory acquisition of agricultural land and issued TDS certificate to the assessee.
- The assessee filed return of income claiming refund of TDS credit on ground that income of the assessee was exempted under section 10(37). The return of income filed was processed under section 143(1) and refund was issued. Subsequently, the case was selected for scrutiny and the assessment was completed under section 143(3) determining the total income of certain amount and tax payable of certain amount by rejecting refund of TDS credit claimed by the assessee on grounds that TDS could be given only to person in whose hand the income was assessed.
- On appeal, Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On sound appeal.

### **Held**

- The Assessing Officer denied credit of TDS in the hands of the assessee on the ground that corresponding income by way of compensation has not been offered to tax. According to the Assessing Officer as per the provisions of section 199 and rule 37BA credit for TDS can be given to the person from whose hands the income is assessed or assessable. Since the income on which TDS has been deducted has not been assessed on the hands of the assessee, the assessee cannot claim credit for TDS and, accordingly, rejected TDS claimed. It is the contention of the assessee that once TDS certificates are in the name of the assessee and credit for such TDS is appeared in the name of the assessee in AIR data base and also the fact that the particular income is not taxable either in the hands of the assessee or in the hands of the HUF credit for TDS cannot be rejected merely on the ground that the corresponding income has not been offered to tax.
- There is merit in the arguments of the assessee for the reason that when a particular income is exempt from tax in view of specific provisions provided under section 10(37) and also the fact that the HUFs have declared the compensation received on account of compulsory acquisition of agricultural land in their return of income and claimed exemption under section 10(37) there is no reason for the Assessing Officer to deny credit for TDS merely on the ground that no income has

been offered to tax in the hands of the assessee. Compensation received on account of compulsory acquisition of agricultural land is exempt from tax under section 10(37). It is further noticed that HUFs have declared the said compensation in the return of income. It is also undisputed that the HUFs have not claimed credit for TDS in their return of income. Therefore, when the facts are clear in respect of exemption of particular receipt in the hands of the assessee as well as HUFs, the question of offering such income for tax in the hands of the assessee does not arise. Further, the Assessing Officer has not disputed the fact that credit for TDS on account of compensation is appearing in the name of the assessee under his PAN is in AIR data base is not disputed. When the credit for such TDS is appearing in the name of the assessee in AIR data base and the assessee has furnished necessary TDS certificate in his name, the Assessing Officer erred in rejecting the claim of credit for TDS by citing the provisions of section 199 read with rule 37BA. Therefore, the revenue's contention that the assessee instead of claiming the entire TDS amount ought to have sought a correction of vendor's mistake would unnecessarily prolonged the entire process of seeking refund based on TDS credit. Therefore, the Assessing Officer erred in denying credit of TDS to the assessee. The Commissioner (Appeals) although accepted the fact that no other person has claimed credit in respect of such TDS failed to direct the Assessing Officer to give credit for TDS to the assessee and on the basis of TDS certificate. Hence, the order of the Commissioner (Appeals) is set aside and the Assessing Officer is directed to allow credit for TDS to the assessee on the basis of TDS certificate.