

TAX FLASH NEWS

The taxpayer is entitled to TDS credit of its sister concern appearing in its Form 26AS due to an inadvertent error of a deductor

Background

Recently, the Delhi High Court (High Court) in the case of Relcom¹ (the taxpayer) held that the taxpayer is entitled to the credit of the Tax Deducted at Source (TDS) of its sister concern due to an inadvertent error made by vendor mentioning the taxpayer's Permanent Account Number (PAN) in the TDS certificate due to which TDS credit was reflected in the taxpayer's Form 26AS instead of Form 26AS of the sister concern. The benefit of the TDS certificate was not availed by the sister concern.

The High Court observed that TDS credit was not availed by the sister concern and hence the tax department cannot deny the taxpayer's TDS claim on a mere technical ground that corresponding income was not that of the taxpayer. The High Court also observed that Rule 37BA of the Income-tax Rules, 1962 (the Rules) envisages grant of TDS credit to entities other than the deductee. Therefore, the taxpayer is entitled to TDS credit.

Facts of the case

- The taxpayer derived income from the business of erection, commissioning and installation of towers on a contract basis. During the year under consideration, the taxpayer filed its return of income. In the return of income, the taxpayer had claimed a credit of all TDS certificates, including that related to its sister concern but the income of the sister concern was not reflected in the taxpayer's Profit and Loss Account.

¹ CIT v. Relcom (ITA No. 26/2015) – Taxsutra.com

- The vendor billed its sister concern for the work but had mistakenly mentioned the taxpayer's PAN in the TDS certificate, thus, inadvertently crediting its TDS account in the 26AS statement of the taxpayer which is PAN based. The taxpayer stated that the benefit of the TDS certificate mistakenly issued in its PAN had not been availed by its sister concern.
- The Assessing Officer (AO) rejected the TDS claim relying on Section 199² of the Income-tax Act, 1961 (the Act) and held that the TDS credit should be allowed to the person from whose income the deduction was made. Therefore, the taxpayer instead of claiming the TDS credit which did not belong to it should have approached the vendors for correction of their record.
- The Commissioner of Income Tax (Appeals) [CIT(A)] and Income-tax Appellate Tribunal (the Tribunal) allowed the TDS claim.

High Court's ruling

- The tax department relied on the phrase '*shall be treated as a payment of tax on behalf of the person from whose income the deduction was made*' to contend that the taxpayer's TDS claim cannot be based on the receipts of its sister concern. However, the taxpayer claimed that TDS claim has not been availed by its sister concern. The tax department, having assessed the sister concern's income in respect of such TDS claim cannot now deny the taxpayer's claim on mere

² Credit for tax deducted - Any tax deduction made in accordance with the provisions of the Act and paid to central government and it shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

technical grounds that the income in respect of the said TDS claim was not that of the taxpayer. Further, the sister concern has not raised any objection with regard to the taxpayer's TDS claim.

- The High Court relied on the decision of the Andhra Pradesh High Court in the case of Bhooratnam³, where the Andhra Pradesh High Court held that the taxpayer is entitled to the TDS credit mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a director of the taxpayer.
- It has been observed that the provisions of Rule 37BA of the Rules envisage grant of TDS credit to entities other than the deductee. Rule 37BA of the Rules is not directly applicable to the facts of the present case, but reliance placed on Rule 37BA of the Rules is merely to demonstrate that not in all circumstances TDS credit is given to the deductee.
- The High Court relied⁴ on the well-settled dictum that procedure is the handmaid of justice, and it cannot be used to hamper the cause of justice. Therefore, the tax department's contention that the taxpayer, instead of claiming the entire TDS amount, ought to have sought a correction of the vendor's mistake, would unnecessarily prolong the entire process of seeking a refund based on TDS credit.



Our comments

The issue with respect to granting of TDS credit to the person other than the deductee has been a matter of litigation. Bringing relief and certainty to taxpayers, the Central Board of Direct Taxes (CBDT) issued a Notification⁵ on TDS credit availment which states that credit of TDS can be availed by persons other than the deductee. The TDS credit will be allowed to persons other than the deductee only in cases where the relevant income is assessable to income tax in the hands of such other person.

The High Court in the present case has referred to Rule 37BA and observed that the said Rule is not directly applicable to the facts of the present case, but reliance placed on this Rules is merely to demonstrate that not in all circumstances TDS credit is given to the deductee.

³ CIT v. Bhooratnam [2013] 357 ITR 196 (AP)

⁴ Sardar Amarjit Singh Kalra v. Pramod Gupta [2003] 3 SCC 272

⁵ CBDT Notification No. 28/2009, dated 16 March 2009

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