

आयकर अपीलीय अधिकरण “A” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.7019/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2012-13)

Mr. Anish Kapurchand Chandaria, Unit No. 1202 12 th Floor, Tower B Peninsula Corporate Park G K Marg, Lower Parel(W) Mumbai-400013	<u>बनाम/</u> v.	ACIT – (CPC) , Bengaluru
स्थायी लेखा सं./PAN : AMNPC1428K		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri P B Chhapgar
Revenue by :	Shri A . Ramachandran

सुनवाई की तारीख /**Date of Hearing** : 22-6-2016

घोषणा की तारीख /**Date of Pronouncement** : 15-09-2016

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee , being ITA No. 7019/Mum/2014, is directed against the appellate order dated 31st July, 2014 passed by learned Commissioner of Income Tax (Appeals)- 10, Mumbai (hereinafter called “the CIT(A)”), for the assessment year 2012-13, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 30th April , 2014 passed by the learned Assessing Officer (hereinafter called “the AO”) u/s 154 of the Income Tax Act,1961 (Hereinafter called “the Act”).

2. The assessee is aggrieved in this appeal by non credit of tax deducted at source under Chapter XVII-B of the Act with respect and in proportion to the income offered for taxation in accordance with the provisions of Section 199 of the Act of 1961 read with Rule 37BA of Income Tax Rules, 1962.

It is the say of the assessee that the assessee earned commission income of Rs.1,42,89,500/- from Aegis Logistics Limited for the assessment year 2012-13 on which tax was deducted at source u/s 195 of the Act falling under Chapter XVII-B of the Act of Rs.44,15,455/- for which TDS credit has not been given by the Revenue on the pretext that the deductor has credited the said sum of amount of commission in its books of accounts to the credit of the assessee for the previous year ended 31-03-2011 i.e. assessment year 2011-12 , which commission was subject to approval of shareholders of the deductor company namely Aegis Logistics Limited which was approved by the shareholders of Aegis Logistics Limited only in the previous year 2011-12 relevant to the assessment year 2012-13 and hence the assessee has rightly offered the said commission income of Rs.1,42,89,500/- correctly in the return of income filed for the assessment year 2012-13 and correctly claimed the credit of tax deducted at source of Rs. 44,15,455/- u/s. 195 of the Act falling under Chapter XVII-B of the Act for the assessment year 2012-13 relying on provisions of Section 199 of the Act of 1961 read with Rule 37BA of Income Tax Rules, 1962. Similarly, it is also the say of the assessee that the commission income of Rs.1,20,00,000/- earned by the assessee on which tax was deducted at source of Rs. 37,08,000/-under Chapter XVII-B of the Act was offered to tax in the assessment year 2013-14 while the deductor credited the said commission to the credit of the assessee in its books of accounts on 31-03-2012 but which was again subject to approval of shareholders of the deductor company which approval of shareholder was obtained by deductor company only in the previous year 2012-13 relevant to the assessment year 2013-14 and hence the assessee has rightly accounted for the said

commission income of Rs.1,20,00,000/- and corresponding TDS credit of Rs.37,08,000/- in its return of income for the assessment year 2013-14 relying upon provisions of Section 199 of the Act read with Rule 37BA of Income Tax Rules, 1962. There was further grievance of the assessee with respect to denial on part of revenue in granting credit of TDS of Rs 2790/- to the assessee. It is the say of the assessee that the assessee income tax return was processed by CPC, Bangalore vide communication Reference no. CPC/1213/P1/1223920339 u/s. 143(1) of the Act whereby demand was raised by Revenue of Rs. 6,62,110/- as payable inclusive of interest payable under provisions of the Act issued by learned Assistant Commissioner of Income Tax(CPC) (Hereinafter called "ACIT(CPC)) . The demand had arisen as the learned ACIT(CPC) has granted credit for TDS of only Rs. 37,08,000/- (which TDS credit in fact was claimed by the assessee for the succeeding assessment year i.e. 2013-14) as against claim of TDS credit of Rs. 44,15,455/- made by the assessee. It is the say of the assessee that the ACIT(CPC) erred in giving credit of TDS of Rs.37,08,000/- which pertained to the assessment year 2013-14 and also erred in denying credit of TDS of Rs. 44,15,455/- pertaining to the instant assessment year 2012-13 against which income of Rs.1,42,98,517/- has been offered for taxation in the instant assessment year 2012-13 on which TDS of Rs.44,15,455/- had been deducted at source by the deductor company Aegis Logistics Limited. The assessee moved an application u/s. 154 of the Act with ACIT(CPC) on 12-02-2014 but without success , of which rejection was communicated to the assessee vide Communication Reference no. CPC/1213/T1/1327516022 dated 30-04-2014 by ACIT(CPC).

3.The assessee carried the matter further by filing first appeal with learned CIT(A) who rejected the contentions of the assessee vide appellate order dated 31-07-2014 by holding that perusal of 26AS certificate reveals that the transaction of commission of Rs.1,42,98,517/- was reported by deductor

company Aegis Logistics Limited to the Revenue as on 31-03-2011 whereby tax was deducted at source under Chapter XVII-B u/s 195 of the Act for assessment year 2011-12 of Rs. 44,15,455/- and hence income was to be reported by the assessee for the assessment year 2011-12 and not for the assessment year 2012-13 as reported by the assessee. It was held by the learned CIT(A) that the AO has correctly given the credit for tax deducted at source of Rs.37,08,000/- , however directions were issued by learned CIT(A) to bring to tax income of the assessee in the correct assessment year, vide appellate orders dated 31-07-2014.

4. The assessee filed second appeal with the Tribunal against the appellate order dated 31-07-2014 passed by the learned CIT(A). The learned counsel for the assessee reiterated the submissions as were made before the authorities below which are set out in preceding para's of this order and are not repeated. The learned counsel placed reliance on Section 199 of the Act of 1961 read with Rule 37BA of Income Tax Rules, 1962 and prayed that the appropriate relief may be granted to the assessee as the assessee has correctly filed his return of income with the Revenue on which proper credit for tax deducted at source was claimed by the assessee in accordance with provisions of Section 199 of the Act read with Rule 37BA of the Income Tax Rules, 1962. The learned DR relied upon the orders of learned CIT(A).

5. We have considered the rival contentions and perused the material on record. We have observed that the assessee has offered for taxation commission income of Rs. 1,42,98,518/- for the assessment year 2012-13 on which tax is stated to have been deducted at source of Rs. 44,15,455/- which is claimed by the assessee in the return of income filed with Revenue. The said commission income was credited to the account of the assessee by deductor Aegis Logistics Limited as at 31-03-2011 and tax was stated to have been deducted at source by the deductor u/s. 195 of the Act amounting to

Rs. 44,15,455/- which was reported to the Revenue to be pertaining to the assessment year 2011-12 while the said commission was stated to be subject to approval of shareholders which approval was accorded by the shareholders of Aegis Logistics Limited only in previous year 2011-12 and hence the assessee accounted for the income as well tax deducted at source thereon only in the assessment year 2012-13 which claim of credit of tax deducted at source was denied to the assessee in the assessment year 2012-13 on the ground that tax deducted at source pertained to the assessment year 2011-12 while credit of tax deducted at source of Rs.37,08,000/- was granted to the assessee which the assessee stated to have claimed in the assessment year 2013-14. The assessee had placed reliance on Section 199 of the Act of 1961 read with Rule 37BA of Income Tax Rules, 1962. The contentions of the assessee needs verification and we are setting aside and restoring this matter/issue to the file of learned AO/ACIT(CPC) who shall verify all the contentions of the assessee as well as return of income filed for the assessment years 2011-12 to 2013-14 to arrive at correct declaration of income and credit of tax deducted at source thereon in accordance with provisions of the Act including relied upon provisions of Section 199 of the Act read with Rule 37BA of the Income Tax Rules, 1962, specifically Rule 37BA(3) of Income Tax Rules, 1962 . It will also be verified by the learned AO/ACIT(CPC) that there is no double credit of prepaid taxes claimed by the assessee for these assessment years 2011-12 to 2013-14 and all the income are duly accounted for by the assessee and hence, thereafter, appropriate rectifications shall be carried out by AO/ACIT(CPC) to ensure correct income is brought to tax as well correct credit of prepaid taxes are granted to the assessee in accordance with the mandate of the Act. There is further grievance of the assessee with respect to denial on part of Revenue in granting credit of TDS of Rs 2790/- to the assessee which shall also be looked into by the AO/ACIT(CPC) in set aside proceedings. Needless to say that the learned AO/ACIT(CPC) shall grant proper and sufficient opportunity

of being heard to the assessee in accordance with the principles of natural justice in accordance with law. The assessee will be allowed to file all necessary and relevant evidences and explanations in support of his contentions. We order accordingly.

6. In the result, appeal filed by the assessee in ITA No. 7019/Mum/2014 is allowed for statistical purposes.

Order pronounced in the open court on 15th September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 15-09-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 15-09-2016

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व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai