

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA Nos. 349 & 350/Ahd/2021
Assessment Year 2018-19 & 2019-20**

Neelkanth Developers Radhe Homes, B/H Radhe- III, Kudasani, Gandhinagar PAN: AAKFN6777F (Appellant)	Vs	Assit. Director of Income Tax, CPC, Bangalore (Respondent)
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**Assessee by: Shri Hardik Vora, A.R.
Revenue by: Shri N.J. Vyas, Sr. D.R.**

Date of hearing : 22-12-2022
Date of pronouncement : 27-12-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

These two appeals filed by the assessee are against the order of National Faceless Appeal Centre (NFAC), Delhi in DIN & Order Nos. ITBA/NFAC/S/250/2021-22/1036974805(1) & ITBA/NFAC/S/250/2021-22/1036974826(1), in proceeding u/s. 143(1) vide order dated 16/11/2021 passed for the assessment year 2018-19 & 2019-20. Since common issues are involved in both the appeals and the consideration, the same are being taken up for consideration together.

2. The assessee has taken the following grounds of appeals:

Assessment year 2018-19

	Grounds of Appeal	Tax effect relating each Ground of appeal
1	On the facts and circumstances of the case as well as law on the subject, the learned commissioner of Income-Tax (Appeals) has erred in confirming disallowed TDS credit.	8,37,421/-
2	On the facts and circumstances of the case as well as law on the subject, the learned commissioner of Income-Tax (Appeals) has erred in confirming order u/s 143(1), disallowing TDS credit on contentious ground.	
3	On the facts and circumstances of the case as well as law on the subject, the learned commissioner of Income-Tax (Appeals) has erred in not dealing with appellant's contention that in case of percentage completion method, exact correlation between amount offered for the tax for the year and TDS for the year cannot be correlated.	
4	On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming interest charged by assessing officer u/s. 234B of the Act.	81,351/-
5	On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of	20,753/-

	Income-Tax (Appeals) has erred in confirming interest on account of deferment of advance tax u/s 234C of the Act.	
6	on the fact and circumstances of the case as well as law on the subject, the learned assessing officer has erred in not giving credit of IDS in order passed u/s 143(1)	N.A.
7	It is therefore prayed that the above demand raised by the assessing officer may please be deleted	N.A.
8	<i>Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.</i>	N.A.
	<i>Total tax effect</i>	9,39,516/-

Assessment year 2019-20

	<i>Grounds of Appeal</i>	<i>Tax effect relating each Ground of appeal)</i>
1	<i>On the facts and circumstances of the case as well as law on the subject, the learned commissioner of Income-Tax (Appeals) has erred in confirming disallowed TDS credit.</i>	3,62,414/-
2	<i>On the facts and circumstances of the case as well as law on the subject, the learned commissioner of Income-Tax (Appeals) has erred in confirming order u/s 143(1), disallowing TDS credit on contentious ground.</i>	
3	<i>On the facts and circumstances of the case as well as law on the subject, the learned commissioner of Income-Tax (Appeals) has</i>	

	<i>erred in not dealing with appellant's contention that in case of percentage completion method, exact correlation between amount offered for the tax for the year and TDS for the year cannot be correlated.</i>	
4	<i>On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming interest charged by assessing officer u/s. 234B of the Act.</i>	
5	<i>On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming interest on account of deferment of advance tax u/s 234C of the Ac</i>	1,572/-
6	<i>It is therefore prayed that the above demand raised by the assessing officer may please be deleted</i>	N.A.
7	<i>Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.</i>	N.A.
	<i>Total tax effect</i>	3,68,965/-

3. The brief facts in relation to the case before us are that the assessee is builder and developer and has offered income on the basis of percentage completion method, whereas the TDS has been deducted by the purchaser of the property under section 194-IA of the Act at the time of execution of sale deeds. Therefore, the case of the assessee is that that it is not possible at all times to correlate a specific amount of TDS with the specific amount of income earned by the assessee in a particular year. In the present case, the counsel for the assessee submitted that the assessable income relating to TDS credit claimed in this year has already been offered to tax in the current

year as well as earlier years, therefore there is no discrepancy in the TDS credit claimed while filing the return of income. The counsel for the assessee further submitted that when a particular income is received by the assessee after deduction of TDS and the said TDS has been duly deposited with the Government and the assessee has received the requisite certificate to this effect, then on production of such certificate, assessee becomes entitled to credit of TDS, even if the assessee has not directly offered the said income to tax. In support of the contention, the counsel for the assessee placed reliance on certain judicial precedents in support. In response, DR placed reliance upon the orders passed by the AO and Ld. CIT(Appeals) respectively.

4. We have heard the rival contentions and perused the material on record. In this case, we observe that the AO issued notice under section 139(2) of the Act for the reason that credit of TDS has been claimed, but the corresponding receipts/income has been omitted to be offered for taxation. In response, the assessee submitted that it has offered sales/income on the basis of percentage completion method, while TDS was deducted by the purchaser of residential unit under section 194-IA of the Act at the time of execution of sale deed. The case of the assessee is that the assessee also collects money on behalf of the landowners. Accordingly, assessee receives full consideration including the part belonging to the land owner and hence TDS is deducted and reflected in Form 26AS of the assessee. However, while processing the return of income at CPC, Bengaluru, AO has given credit of only part of TDS and raised the tax demand for the balance amount, along with interest under section 234 A and 234C of the act, respectively. In

our considered view, in the instant case, if the income has been offered by the assessee by following the percentage completion method, in the current year or in any of the earlier years, while TDS has been deducted subsequently by the buyer/purchase at the time of execution of sale deed and the assessee is able to produce the requisite certificates to substantiate that TDS has been deducted on the income which has been offered to tax by the assessee either in the current/earlier years (since income is being offered to tax following the percent completion method while TDS was deducted at the time of execution of sale deed, the income presumably would be offered to tax either in the same year or in any of the earlier years) and the assessee is able to correlate the income offered to tax with the TDS deducted, the assessee is eligible for credit of TDS. In the case of **Supreme Renewable Energy Ltd.[2010] 124 ITD 394 (Chennai)**, ITAT held that when a particular income is received by assessee after deduction of tax at source and said TDS has been duly deposited with Government and assessee has received requisite certificate to this effect, then on production of said certificate assessee becomes entitled to credit of TDS, even if assessee has not directly offered said income for tax as assessee considers that same is not liable for tax. In the case of **Zelan Projects (P.) Ltd.[2015] 63 taxmann.com 334 (Hyderabad - Trib.)**, the ITAT held that where TDS was deducted from mobilisation advance paid to assessee-erection contractor, credit of same was to be allowed, even if no income was assessable to tax as contract was not fully executed in relevant year. In the case of **Abbott Agency, Ludhiana, [2014] 41 taxmann.com 404 (Punjab & Haryana)**, the High Court held that where relevant income had been accounted in earlier assessment year but TDS certificate was issued late in

subsequent year, credit for TDS would be allowed in subsequent year. In the case of **NCC Maytas JV v. ACIT [A.Y. 2006-07, ITA No. 812 (Hyd.) of 2013, dated 13-9-2013]**, the ITAT held that a part of TDS cannot be denied on the ground that the corresponding turnover has not been shown in the A.Y. in which credit is being claimed, if income relating to such TDS has already been offered for taxation in an earlier assessment year. In the instant facts, in view of the aforesaid rulings, if the assessee has offered income to tax in either in the current year or any earlier year and TDS has been deducted on the same in the current year at the time of execution of sale deed, credit for the TDS so deducted should be allowed to the assessee in the current year, subject to the assessee producing the necessary supporting to show that corresponding income has been offered in tax either during the current year or any of the earlier previous years. In the instant facts, the buyer/purchase of property deducted tax only at the time of execution of sale deed, while the corresponding income has been offered to tax by the assessee either during the current year or in any of the prior years by the assessee following the percentage completion method. Accordingly, in the above facts, the matter is being restored to the file of AO to carry out the necessary verification in respect of income offered to tax and the corresponding TDS for which credit is being claimed and TDS credit may be allowed after carrying out the necessary verification in the year when TDS has been deducted- subject to the assessee producing the correlation that such income has been offered to tax either during the current year or any of the earlier previous years.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

6. Since the issue for consideration for both the years under consideration i.e. assessment year 2018-19 and 2019-20 are the same, the observations for assessment year 2018-19 would apply to assessment year 2019-20 as well.

7. In the result, appeal of the assessee for assessment year 2019-20 is allowed for statistical purposes.

8. In the combined result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 27-12-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 27/12/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद