

आयकर अपीलिय अधिकरण "सी" न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री आर. के. गुप्ता, न्यायिक सदस्य एवं श्री राजेन्द्र सिंह लेखा सदस्य के समक्ष  
BEFORE SHRI R.K. GUPTA JUDICIAL MEMBER AND SHRI RAJENDRA SINGH  
ACCOUNTANT MEMBER

आयकर अपील संख्या/ITA NO.8532/Mum/2011  
(निर्धारण वर्ष / Assessment year: - 2007-08

Citicorp Finance (India) Limited, 5 <sup>th</sup> Floor, Plot C-61, Bandra Kurla Complex, G Block, Bandra East, Mumbai – 400 051.	बनाम / Vs.	The Addl. Commissioner of Income Tax, range 10(1), Aayakar Bhavan, Mumbai.
PAN:- AAABCC4881F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by	Shri A.V. Sonde
प्रत्यर्थी की ओर से / Respondent by	Shri Deepak Kumar Sinha

सुनवाई की तारीख / Date of hearing	5.09.2013
घोषणा की तारीख / Date of pronouncement	13.09.2013

**आदेश / ORDER**

**PER RAJENDRA SINGH, AM**

This appeal by the assessee is directed against the order dated 6.9.2011 of CIT(A) for the assessment years 2007-08. The dispute raised by the assessee in this appeal is regarding credit of TDS and allowability of interest on interest u/s 244 of the Income Tax Act.

2. The facts in brief are that the assessee in the assessment year 2007-08 had claimed total TDS of Rs. 215163912. Claim of Rs. 1,65,20,93,44/- has been made in the original return and further claim of Rs. 14,271,296 had been made in the revised return filed on 13.4.2009. Thereafter during

the assessment proceedings, the assessee had made further claim of Rs. 35,683,272/- vide letter dated 28.12.2010. The AO however gave the credit of TDS only to the tune of Rs. 118,960,393/-. The assessee disputed the matter in appeal and CIT(A), in the impugned order, directed the assessee to furnish all TDS certificate in original before the AO who was directed to verify the claim of credit of TDS and to allow TDS as per original challans available on record or as per details of such TDS available on computer system of the department. Aggrieved by the decision of CIT(A) the assessee is in appeal before Tribunal.

3. Before us the, learned AR for the assessee submitted that the AO was not allowing for the credit of TDS because of discrepancy with respect to credit shown in the form No. 26AS which is not correct. It was argued that the credit of TDS has to be given on the basis of TDS certificates and in case TDS certificates are not available, on the basis of details and evidence furnished by the assessee regarding deduction of tax at source. Reliance for the said proposition was placed on the judgment of Hon'ble High Court of Bombay in case of Yashpal Sawhney Vs. ACIT (293 ITR 539). Reference was also made to the recent judgment of Delhi High Court in case of Court On Its Own Motion Vs. CIT (352 ITR 273). In which the High Court directed the department to ensure that the credit is given to the assessee on the basis of details and evidences furnished, where the deductor does not upload the correct details in the form 26AS. The learned AR further pointed out that the new system of Form 26AS was applicable only from assessment year 2009-10 and was not applicable in case of the assessee. Therefore, it was requested that the department may be directed to allow the credit of TDS on the basis of TDS certificate or indemnity bond and on the basis of credit shown in the form 26AS. The learned DR on the other hand placed reliance on the orders of authorities below.

4. We have perused the records and considered the matter carefully. The dispute is regarding credit for TDS. The credit of TDS has been denied to the assessee on the ground that the claim for TDS was no reflected in the computer generated form 26AS. The difficulty faced by the tax payer in

the matter of credit of TDS had been considered by the Hon'ble High Court of Bombay in case of Yashpal Sahwney Vs. DCIT (Supra) in which it was held that even if the deductor had not issued TDS certificate, the claim of the assessee has to be considered on the basis of evidence produced for deduction of tax at source as the revenue was empowered to recover the tax from the person responsible if he had not deducted tax at source or after deducting failed to deposit with Central Government. Hon'ble High Court of Delhi in case of Court On Its Own Motion Vs. CIT (Supra) have also directed the department to ensure that credit is given to the assessee, where deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the department. Therefore, the department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor had not issued TDS certificates on the basis of evidence produced by assessee regarding deduction of tax at source and on the basis of indemnity bond. We, therefore modify the order passed by CIT(A) on this point and direct the AO to proceed in the manner discussed above to give the credit of tax deducted at source to the assessee.

5. The second dispute is regarding grant of interest on interest. It has been submitted by the learned AR for the assessee that the assessee was entitled for interest on the excess tax paid which had not been given to assessee and, therefore, from the due date of interest, further interest had to be allowed on the interest due. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. Vs. CIT And Others (280 ITR 643). The learned DR placed reliance on the orders of authorities below.

6. We have perused the records and considered matter carefully. The dispute is regarding grant of interest on delayed payment of interest. In case the assessee has paid excess advance tax or excess TDS, the assessee is liable for refund with interest and in case the interest is not granted on the due date, the assessee is liable for further interest on interest, in view of the Judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. Vs.

CIT and others (Supra). We, therefore, direct the AO to allow the assessee interest on interest if due as per law in the light of Judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. (Supra).

7. In the result appeal of the assessee is allowed.

Order pronounced on 13 -9-2013

Sd/-

**(R.K. Gupta)**  
**Judicial Member**

Sd/-

**(Rajendra Singh)**  
**Accountant Member**

SKS Sr. P.S, Mumbai dated 13.9.2013

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

Assistant Registrar  
Income Tax Appellate Tribunal,  
Mumbai Benches, MUMBAI

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "K, MUMBAI**

**Before Shri R.S.Syal, AM and Shri Vijay Pal Rao, JM**

**S.A.No.07/Mum/2013**

(Arising out of ITA No.7786/Mum/2012 : Asst.Year 2008-2009)

M/s.3i Infotech Limited Tower No.5, 3 <sup>rd</sup> Floor to 6 <sup>th</sup> Floor International Infotech Park, Vashi Mumbai – 400 703. <b>PAN : AAACI5205Q.</b>	Vs.	The Dy.Commissioner of Income-tax Range 10(3) Mumbai.
(Applicant)		(Respondent)

**Applicant by : Shri Nitesh Joshi  
Respondent by : Shri Dipak Kumar Sinha**

**Date of Hearing : 01.02.2013.**

**Date of Pronouncement : 01.02.2013.**

**ORDER**

**Per R.S.Syal, AM :**

By means of the present stay application the assessee seeks to get the stay of outstanding demand amounting to ₹18,87,67,930 for assessment year 2008-2009, till the final disposal of the appeal.

2. The facts of the present stay application indicate that originally this application was filed showing amounting of demand outstanding at ₹18,87,67,930. The case came up for hearing on an earlier occasion. It was adjourned at the request of the assessee for the reason that the assessee had filed rectification application and stay applications before the authorities below, which were not disposed off till then. Today, the learned AR presented himself before the Tribunal by stating that the original order passed by the Assessing Officer has been now rectified on application of the assessee. A copy of the rectification application dated

December 2012 has been placed on page 313 of the paper book. Apart from other issues, the assessee stated in this application filed before the A.O. that there were TDS certificates available with it to the tune of ₹26.85 crore as against which credit of only ₹18.28 crore was allowed against the due tax. The assessee requested for grant of credit in respect of the balance TDS certificate amounting to ₹8.57 crore. The Assessing Officer passed order u/s 154, a copy of which is available on page 8 of the assessment order. After accepting the assessee's contention on certain other issues, he reduced the total amount of outstanding demand to ₹7,55,06,298. A copy of Notice of demand dated 18.01.2013 showing this amount as outstanding, is available on pages 5 to 7 of the paper book. As regards the assessee's contention for allowing TDS for the remaining amount of TDS certificates, the A.O. mentioned in his order u/s 154 dated 18.01.2013 that : "With regards to TDS claim of the assessee, same is allowed as per matching available in the system". The net result of the rectification proceedings on the question of allowing credit against TDS certificates is that no benefit for the remaining TDS certificates to the extent of ₹ 8.57 crore has been allowed. The assessee appeared before the authorities below in connection with grant of stay. It was directed to deposit a sum of ₹2.50 crore in three installments starting with ₹50 lakh on 31.01.2013 and ₹1 crore each on 20.02.2013 and 18.03.2013. The assessee has duly deposited a sum of ₹50 lakh as per the direction of the Assessing Officer. A copy of challan dated 30.01.2013 is available on record. This shows that as against the revised demand of ₹7.55 crore computed by the Assessing Officer pursuant to his

rectification order u/s 154, a sum of ₹50 lakh has already been paid. This leaves the demand outstanding at ₹7.05 crore. The fact that the assessee has unadjusted TDS credit for the current year at ₹8.57 crore as mentioned in its rectification application, has not been denied by the A.O. in his order. Merely because the Department's system does not indicate the said amount of TDS refund of ₹8.57 crore, it cannot be held that the assessee should be compelled to deposit the amount once again. It is for the Department to check the error in its system or point out fallacy in the assessee's claim. There can be no question of penalizing the assessee for no fault committed by it. If the assessee's contention about the unallowed TDS credit of ₹8.57 crore had been incorrect, the A.O. should have made a mention of this in his order u/s 154. *Prima facie* it appears that there is unadjusted TDS amount of ₹8.57 crore against the current year's income. Since the remaining amount outstanding at ₹7.05 crore is obviously less than the said amount of ₹8.57 crore, in our considered opinion the assessee cannot be pressed to deposit a further sum of ₹ 2 crore as has been directed by the A.O. vide his order dated 23.01.2013. Considering the overall conspectus of the case, we grant stay of the remaining demand of ₹7.05 crore till the disposal of appeal or for a period of 180 days from the date of this order, whichever is earlier. The Department is at liberty to adjust the outstanding demand by allowing credit as per TDS certificates for which no credit has been so far allowed to the assessee. The Registry is directed to fix the present appeal for hearing on out of turn basis on 3<sup>rd</sup> April, 2013. An announcement to this effect was made on the conclusion of the

hearing. The assessee has waived the right to separate notice of hearing. It is made clear that the assessee shall not be entitled to take any adjournment without just case. If such an adjournment is sought, then this case shall be delisted from the priority list to be taken up in routine course.

3. In the result, all the stay application is allowed.

Order pronounced in the open Court on this **1<sup>st</sup> day of February, 2013.**

**Sd/-  
(Vijay Pal Rao)  
JUDICIAL MEMBER**

**Sd/-  
(R.S.Syal)  
ACCOUNTANT MEMBER**

**Mumbai : 1<sup>st</sup> February, 2013.**  
Devdas\*

Copy to :

1. The Applicant.
2. The Respondent.
3. The CIT concerned
4. The CIT(A) Mumbai.
5. The DR/ITAT, Mumbai.
6. Guard File.

**TRUE COPY.**

**By Order**

**Assistant Registrar, ITAT, Mumbai.**