TDS CREDIT AND SECTION 199 r/w RULE 37BA

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The CPC is blatantly disallowing the TDS credit citing Rule 37BA and many assessees are pushed to unwarranted litigation in the process. In fact, for want of clear instructions from CBDT, this *en-masse* disallowing TDS credit is going on. The article summarises the analysis as pronounced in various judgments and orders and shows that the TDS credit has to be given to the assessee once it appears in 26AS.

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The Courts and ITAT have settled the principle that Rule 37BA is just a procedural guideline and cannot be applied straightly to all the cases. The law is clear and rules cannot override the same. Few situations which frequently come across are discussed in the following article.

1. When the income is fully exempt or not taxable in India

1.1 ABB AB C/o ABB INDIA LIMITED vs. DCIT, ITA Nos.464/Bang/2018 & 2878/Bang/2019, AY 2012-13 & 2013-14.

The assessee ABB AB, a tax resident of Sweden within the meaning of DTAA between India and Sweden. The assessee is engaged in power and automation technologies for utility and industry customers received consideration for on-shore as well as off-shore supply contracts and filed the return of income on 29.11.2012 for the Assessment Year 2012-13 disclosing total income of Rs160,694,185/- of on-shore supply, claiming off-shore supply income as not taxable in India and claimed a refund of Rs.28,56,25,430/- including for off-shore supply.

In assessment proceedings AO accepted the returned income of Rs.160, 694,185/- but allowed the TDS credit only to the extent of Rs.1,71,15,646/- stating that credit can be given only when the corresponding income was offered for taxation as per provisions of Section 199 of the Act r. w. Rule 37B. CIT(A) dismissed the appeal. Hon. ITAT held that

the off-shore supply contracts are not taxable in India but TDS was deducted in India therefore assessee is eligible for refund of TDS Credit. We considering the facts, submissions and judicial decisions are of view that the AO first has to quantify and examine the refund. Accordingly, in the interest of Justice, we restore the disputed issue for limited purpose to the file of Assessing Officer to examine and verify the correctness of claim and to consider the ratio of judicial decisions. And we allow the grounds of appeal of assessee for statistical purposes.

In this order the ITAT relied upon the following cases-

ARVIND MURJANI BRANDS (P.) LTD., (2012) 149 TTJ 0221 – discussed in para 2(1) in of this article.

ACIT vs. PEDDU SRINIVASA RAO, (2011) 30 CCH 0651 VisakhapatnamTrib: which concluded that- Even if the income earned by the assessee has not been offered for tax being not liable for tax, the assessee is entitled for credit of TDS made in respect of that income. Once the TDS was deducted and paid to the Central Government, a credit of the same should be given to the assessee.

Held: *From a careful perusal of the legal propositions laid down through the aforesaid orders by the Tribunal and the relevant provisions of the Act, this court is of the view that once the TDS was deducted and paid to the Central Government, a credit of the same should be given to the assessees in order to avoid all sorts of complications in the year of deduction of the TDS. Therefore, this court finds no infirmity in the order of the CIT(A) who has rightly directed the A.O. to allow the credit of the TDS in the impugned assessment year. Accordingly, the order of the CIT(A) is confirmed. Progressive Constructions Limited Vs. JCIT ITA 482 and 557/Hyd/2001, Supreme Renewable Energy Limited Vs. ITO 32 DTR 140, Toyo Engineering Limited 5 SOT 616.*

SUPREME RENEWABLE ENERGY LIMITED vs. ITO 32 DTR 140; (2010) 128 TTJ 0352 [discussed in the following para 2(3)]

TOYO ENGINEERING LIMITED (2006) 100 TTJ 373 (Mum.); 5 SOT 616 -

The expression "income" includes not merely what is received or what comes in by exploiting use of a property but also what one saves by using it by oneself and also which can be converted into income. Likewise, the nexus between the deduction of tax at source and the assessable income is not apparent in every assessment year. Every amount from which TDS is made does not constitute income. The word income is of the widest amplitude and it must be given its natural and grammatical meaning.

Credit of TDS has to be given in the relevant previous year even though assessee follows project completion method of accounting; TDS during the financial year relevant to asst. yr. 1999-2000 had to be given credit for in that assessment year even though income was returned in subsequent asst. yr. 2000-01

This principle in the case of the same assessee is confirmed once again in – DCIT vs. TOYO ENGINEERING LIMITED (2012) 32 CCH 0352 MumTrib.

1.2 Recently in the case of **SIEMENS INTERNATIONAL TRADING LTD. & ANR. vs. ITO & Ors. (2024) 70 CCH 0182 DelTrib** the facts were similar. Assessee is a company registered under laws of People's Republic of China and involved in procurement and sale of Rolling Stocks. Its portfolio covers full range of vehicles from railroad cars to metros and locomotives to trams and light-rail vehicles. It entered into a contract with IL & FS Rail Limited (IRL). Scope of work of assessee under contract was limited to offshore supply of Rolling Stock. Assessee, received an amount in connection with aforesaid contract on which tax was deducted by IRL on basis of withholding tax certificate issued by ITO, u/ s 197. Assessee had filed return of Income declaring NIL income and claiming a refund on account of TDS. AO disallowed claim for refund of TDS. CIT(A) deleted addition holding that similar addition has been deleted in case of assessee in earlier Assessment Year 2015-16 where facts were similar to present case. Dept. challenged before ITAT and it was held that,

… rigid and literal interpretation of Rule 37 BA may indicate that credit for tax deducted is only available against income declared corresponding to such receipts. This is however not logically correct. Once tax has been deducted and deposited, deductee has a right to claim credit of that tax. This is borne out by a number of judgments quoted by appellant in his submissions and also on prima facie facts. Credit available to assessee may be eligible to hit as a refund in case consideration on which tax has been deducted is not taxable. This is primary concept of taxation and withholding tax. Therefore, once appellant' s income is not held to be taxable in current year, credit for tax on such receipt cannot be denied to him. AO therefore, is incorrect in not granting credit by application of Rule 37BA. No infraction of Rules or provisions on this issue. Hence, keeping in view, order of CIT(A) for A.Y. 2016- 17,

assessee is entitled to credit of TDS/Withholding tax and consequent refunds thereof— Revenue's appeal dismissed.

2. <u>When the income is capitalized and not offered to tax</u>

The facts in a case of - **ITO vs ADANI VIZHINJAM PORT PVT. LTD., (2023) 67 CCH 0171 AhdTrib**, the ITAT bench at Ahmedabad were as under:

Particulars	Amount	TDS	Remarks
Interest	1,60,88,446	16,08,845	Capitalised in books of a/c
Advance against funded work	1,46,30,00,000	2,92,60,000	Recorded as "Other Liabilites"
Total	1,47,90,88,446	3,08,68,845	

The assessee received intimation u/s. 143(1) dated 23-03-2019, wherein it was stated that there is mismatch in credit of TDS claimed by the assessee in the RoI and hence credit and refund of TDS of Rs. 3,08,68,545/- was denied. In appeal before CIT(A), the assessee claimed that there is no mismatch and amounts reflected in 26AS is correctly recorded and reflected in the books of accounts and the ITR and that the credit cannot be denied even if the income is capitalized and it cannot be held that no income is offered to tax. The interest was earned on Fixed Deposits with bank during the construction period and the capital work was in progress and that interest was capitalised as per the ratio settled by Hon. Supreme Court in Bokaro Steel Ltd., 236 ITR 315 and that the income was deducted from the CWIP, the same amounts to offered to tax. The advance received was against the contract with the Kerala Govt. and TDS was deducted from the same. This advance was capitalised as Advance against Funded Works and reflected under Other liabilities in the Balance Sheet. The assessee claimed that as per Sec. 199, once when a particular amount is received by the assessee after deduction of tax at source has been duly deposited with the Government, then the assessee becomes entitled for credit of TDS even if the assessee has not directly offered the said income to tax and that as per the amended definition of section 199, the words "for the assessment year for which such income is assessable" has been omitted. Hence, credit of the TDS shall be given to the assessee irrespective of the fact whether related income has been offered during the said year or not. CIT(A) accepted the argument and ordered to allow TDS credit.

The Dept. went before the ITAT with the claim that Rule 37BA TDS credit has to be claimed in the year in which the income has been offered to tax. The ITAT dismissed the case and ruled in favour of the assessee.

In the order Hon. ITAT had relied upon following cases:

1) ARVIND MURJANI BRANDS (P.) LTD., (2012) 149 TTJ 0221, it was held that –

Where amount on which tax was deducted at source is not at all chargeable to tax, command of section 199 will have to be harmoniously and pragmatically read as providing

for allowing credit for tax deducted at source in year of receipt of amount, in which tax was deducted at source.

2) ZELAN PROJECTS P. LTD. Vs. DCIT, (2015) 43 CCH 0033 HydTrib:

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.

3) SUPREME RENEWABLE ENERGY LTD. [2010] 124 ITD 394 (Chennai):

In this case interest received was treated as capital receipt and deducted from the cost of assets and TDS credit was allowed by ITAT.

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.

4) CIT vs. RELCOM, (2015) 234 TAXMAN 0693 (Delhi). This is discussed in the following para 4.

5) IVRCL-KBL (JV) v. ACIT, (2016) 239 TAXMAN 0152 (AP): (2016) 289 CTR 0111 (AP):

Assessee- a joint-venture executing civil contract works – was awarded contracts by Irrigation Department of State Government. Subsequently, those contracts were given by assessee on sub-contract basis to one of its constituents without any margin. The assessee filed its return claiming refund of tax deducted at source from its bills by State Government. The AO opined that since no real work was carried on by assessee, no income had accrued to it; and, therefore, credit for TDS was not allowable in hands of assessee in terms of Rule 37BA(2)(i). While appeal was pending before CIT(A), writ petition was filed before the High Court and it held that:

Fact remains that there was no privity of contract between State Government and constituent of assessee i.e. sub-contractor, and, moreover, income from contract entered into between assessee and State Government was assessable only in assessee's hands, credit for tax deducted at source was to be given to assessee alone.

As noted hereinabove, not only did the Government of Andhra Pradesh deduct tax at source from the petitioner's bills, the petitioner, in turn, while making payment to the sub-contractor, also deducted tax at source from the bills of the latter. Credit for the tax deducted at source, by the petitioner from the bills of the sub- contractor, was given to the sub-contractor as such income was assessable in their hands. Likewise, credit for the tax deducted at source, from the bills of the petitioner, was required to be given to the

petitioner alone as the income, from the contract entered into between them and the Government of Andhra Pradesh, was assessable only in their hands, and not in the hands of the sub- contractor. It is, however, not in dispute that the sub-contractor has not made any claim for being given credit for the tax deducted at source by the Government from the bills of the petitioner herein. It is not as if there were conflicting claims by the petitioner-JV on the one hand, and its constituent sub-contractor on the other, both seeking credit for the tax deducted at source by the Government, necessitating retention of these amounts by the Revenue till resolution of the conflicting claims. As held by the Division Bench of High Court, in Bhooratnam and Co., the Revenue cannot be allowed to retain the amounts representing the tax deducted at source without credit being given to anybody. If credit of tax is not allowed to the petitioner-assessee, and the sub- contractor has not made any claim for refund, it would result in credit of the TDS not being taken by anybody and this, as has been rightly pointed out by the Division Bench in Bhooratnam and Co., is not the spirit and the intention of the law. To the limited extent the assessing authority denied credit to the petitioner, for the tax deducted at source from their bills by the Government, the impugned assessment orders/rectification orders are set aside. The assessing authority shall determine the quantum of credit for TDS which the petitioners are entitled to in terms of this order and refund the amount so computed to the petitioners herein in accordance with law. The entire exercise, culminating in final orders being passed, shall be completed within a period of three month from the date of receipt of a copy of this order.

6) ESCORTS LTD. v DCIT [2007] 15 SOT 368 (Delhi):

The ITAT held that,

Once tax is deducted on income credited by assessee in its books of account and a requisite certificate to this effect is issued by deductors after deposit of tax amount in Government treasury, assessee becomes entitled to credit of such TDS while computing tax liability for relevant period.

ITAT further held that:

Credit for TDS must in every case be given to assessee from whom income-tax was deducted at source and paid to credit of Central Government. If recipient of income considers that he is not liable to tax in respect of income, wholly or partly and, therefore, does not disclose amount of such income in his return, income-tax department cannot refuse to give credit merely by contending that income had not been disclosed in return filed by assessee for assessment year.

7) SADBHAV ENGINEERING LTD. vs. DCIT, (2014) 161 TTJ 0116 (Ahd):
Once the TDS deducted, credit of the same to be given to assessees, irrespective of year to which it relates.

8) ACIT vs. PEDDU SRINIVASA RAO, (2011) 30 CCH 0651 VisakhapatnamTrib:
We have carefully perused the provisions of section 199 of the Act and according to the pre-amended provisions of section 199, the credit of deduction made in accordance with the relevant provisions of this chapter and paid to the Central Government, shall be given for the amount so deducted on the production of the certificate furnished u/s 203 for the assessment made under this Act for the assessment year for which such income is assessable. But in the amended provisions the words "for the assessment year for which such income is assessable" has been omitted. Meaning thereby, that the legislature was quite conscious about the facts and hardships faced by some assessees, while making the amendments in section 199 and in amended provisions nothing has been stated about the year in which the credit of TDS is to be claimed. As per amended provisions of section 199, in sub-section 1, it has been stated that any deductions made in accordance with the foregoing provisions of this chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made. Therefore, as per the amended provisions, once the TDS was deducted, a credit of the same to be given to the assessees, irrespective of the year to which it relates.

9) NCC Maytas JV vs ACIT, A.Y. 2006-07, ITA No. 812 (Hyd.) of 2013, dated 13-9-2013:
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.

3. <u>When accounts are on Cash Basis and only TDS is offered to tax</u>

In the case of **CHANDRA SHEKHAR AGGARWAL vs. ACIT, (2017) 51 CCH 0282 DelTrib,** the facts were that the assessee, a senior advocate being professional, kept his accounts on cash basis and offered to tax the amount equivalent to TDS deducted of Rs 7,95,600. and claimed credit of the same but, TDS credit of only 79560, i.e. 10% of Rs.7,95,600 was allowed. CIT (A) remanded back the case with the direction "the A.O is further directed to give credit of TDS strictly as per the provisions of Section 199 to be read with Rule 37BA of the I.T. Rules 1962". The assessee went before the ITAT, with the ground that this is vague order and plea to allow full refund. ITAT allowed the appeal based on the ITAT's earlier decision in the case of the assessee himself - CHANDER SHEKHAR AGGARWAL vs. ACIT, (2016) 157 ITD 626 (Del), where it had allowed the same issue with analysis of Sec. 199 r. w. rule 37BA.

ITAT reproduced the principle settled in that case as under-

Rule 37BA (1) of the Act provides rules relating to have credit for the purpose of section 199 of the Act as is provided in section 199(3) of the Act. Rule 37BA(3)(i) of the Act provides that credit for tax deducted at source and credited to the account of Central Government shall be

given for the assessment year for which, such income is assessable. Thus, if the said rule is read, it is clear that the assessee is entitled to get credit of the tax deducted at source once such income is included in his income. The admitted facts of the case of the appellant is that the tax deducted at source has been offered as income by the appellant in his return of income and therefore, having regard to even the rules, the assessee is entitled to credit of the tax deducted at source. As per amended provisions of section 199, in sub-section 1, it has been stated that any deductions made in accordance with the foregoing provisions of this chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made. Therefore, as per the amended provisions, once the TDS was deducted, a credit of the same to be given to the assessees, irrespective of the year to which it relates.

4. When the income is taxed in some other assessee's hands

4.1 In an interesting case- **CIT vs. RELCOM, (2015) 234 TAXMAN 0693 (Delhi)-** before Hon. Delhi High court the TDS was credited to assessee's account with its PAN but it did not receive the underlying income and claimed credit of TDS without offering the said income.

The facts involved in this case are that: During the year under consideration, the respondent (hereinafter referred to as, "the assessee") derived income from the business of erection, commissioning and installation of towers on contract basis. It filed its returns for AY 2009-10 on 29.03.2010 and the returns were processed under Section 143(1) of the Income Tax Act, 1961 (hereafter referred to as, "the Act"). The Assessing Officer (AO) noticed that as per Form 26AS statement, though the total receipts declared by the assessee was Rs.6,20,99,368/- (as opposed to Rs. 19,08,20,903/-), the TDS claimed was Rs. 1,20,73,097/-. The assessee's explanation for the discrepancy was that a vendor had billed M/s Relcom Engineering Pvt. Ltd. ("REPL"), its sister company, for the work but had mistakenly mentioned its (assessee's) PAN in the TDS certificate, thus inadvertently crediting its TDS account in the 26AS statement, which is PAN based.

The assessee had claimed credit of all TDS certificates, including that related to M/s REPL but the income of this certificate was not reflected in the Profit and Loss Account. The total TDS claim made by the assessee was Rs. 1,20,73,097/-against a total of '19,08,20,903/- received. The assessee stated that the benefit of the TDS certificate mistakenly issued in its PAN name has not been availed by M/s REPL. The Assessing Officer (AO) rejected this claim relying on Section 199 of the Act and held that the TDS credit should be allowed to the person from whose income the deduction was made. Therefore, according to the AO, the assessee, instead of claiming the credit of the TDS which did not belong to it, should have approached the vendors for correction of their record. The AO held that since out of the total receipts of Rs. 19,08,20,903/-, the assessee received only Rs. 6,20,99,368/- (and the rest of the amount was received by M/s REPL), the TDS could be claimed only against the said amount of Rs. 6,20,99,368/-.

In appeal CIT(A) allowed the TDS claim on the ground that since the assessee had already paid the due taxes in M/s REPL (both companies being a part of the same group), it would be a travesty of justice to not allow the benefit of TDS to the assessee. This was based on the fact that, the credit of TDS has gone in the account of M/s. Relcom in the 26AS statement, which is PAN based. The appellant found it cumbersome to get fresh corrected certificates from the vendor and to approach the TDS division of the department for necessary rectification in the 26AS statement. Instead, the group decided that both the concerns belong to the same group and it would be easier to claim refund in M/s. Relcom and pay the due taxes in M/s. REPL.

ITAT dismissed the revenue's appeal.

Hon. High Court held that,

as the assessee fairly admitted throughout the proceedings for its TDS claim of Rs. 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister concerns and M/s REPL has not raised any objection with regard to the assessee's TDS claim of Rs. 1,20,73,097/-.

Hon. High Court relied on Hon. Andhra Pradesh High Court ruling in the case of CIT V. BHOORATNAM, (2013) 357 ITR 196 (AP) which stated the principle that**:** *The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law.*

Hon. High court has reiterated the settled principles as under:

9. At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee.

10. This Court relies upon the well-settled dictum that procedure is the handmaid of justice, and it cannot be used to hamper the cause of justice [Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272]. Therefore, the revenue's contention that the assessee, 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 refund based on TDS credit.

Thus, this judgment has reiterated that Rule 37BA cannot be applied in every case. It is not a straight-jacket formula but it depends upon the facts of each case. It highlights the old settled dictum that *the procedure is the handmaid of justice and it cannot be used to hamper the cause of justice*.

4.2 In another case before Hon. High Court of Gujarat, - **NARESH BHAVANI SHAH (HUF) vs. CIT, (2017) 396 ITR 0589 (Guj) -** the income belonged to HUF and was offered to tax in its hands and the TDS was deducted and posted in the PAN and name of the Karta.

The HUF funds were invested in RBI Bonds but name and PAN was quoted of the Karta without mentioning him as such. TDS was deducted in the PAN and name of the individual on interest income.

HUF offered the income to tax and claimed corresponding TDS credit, which was denied u/s 143(1). The individual Karta did not claim that corresponding TDS credit although appearing in his name and PAN. AO rejected HUF's application. The CIT (A) rejected the claim made in Revision application stating that, on account of the mismatch of PAN reflected in the TDS certificate and that of the petitioner, the credit cannot be granted. He held that as per the prescribed procedure TDS credit can be given only to the assessee against whose PAN the tax was deducted.

High Court observed that the TDS credit can be given to the PAN to which it is credited. It also observed that Rule 37BA (2) prescribes the procedure to follow with three conditions when the underlying income and TDS is assessable in the hands other than the deductee and held that in the case before it, *many years have passed since the event arose. The facts are not seriously in dispute. The HUF has already offered the entire income to tax. The department has also accepted such declaration and taxed the HUF. In view of such special facts and circumstances, we direct the department to give credit of the said sum of Rs.5,42,800/- to the petitioner HUF deducted by way of tax at source upon Shri Naresh Bhavanji Shah (Karta) filing an affidavit before the department that the sum invested by the RBI does not belong to him, the income is also not his and that he has not claimed any credit of the tax deducted at source on such income for the said assessment year.*

4.3 DCIT vs RELIANCE INFRASTRUCTURE LTD., (2023) 224 TTJ (Mumbai) 1

Tax was deducted by Tata Power Co. Ltd. (TPC) on payment made to Adani Electricity Mumbai Ltd. (AEML). In its return of income AEML has not claimed credit for TDS appearing in its Form 26AS. Instead AEML has transferred the credit of TDS to the PAN of the assessee since the corresponding income does not belong to AEML and has been offered to tax by the assessee. Issue of claiming of credit by the assessee has arisen from the fact that assessee has transferred the business of generation, transmission and distribution of electricity to AEML vide a share purchase agreement. AAR has categorically held that the income so received by AEML is taxable in the hands of the assessee. CIT of AEML also filed the report with the AAR that the income does not belong to AEML but it is taxable in the

hands of the assessee. Thus, there is no dispute that this income belongs to the assessee and is taxable in the hands of the assessee. Deductor, i.e., TPC has refused to issue a certificate in favour of the assessee or comply with r. 37BA. It is not even disputed by the Department that assessee is entitled for credit for TDS.

Rules should not frustrate the main provisions of the Act. Therefore, in the peculiar facts and circumstances of the case, the AO is directed to give credit of TDS to the assessee.

Deduction is allowed for the amount paid to the Central Government which shall be treated as payment of tax on behalf of the person from whose income the deduction was made, where the TDS was deducted on income which has been shown and offered to tax by an assessee, which here in this case is the assessee. The enabling provision of s. 199(1) allows deduction on the payment of tax who has offered the income. Rule 37BA which has been framed by the CBDT in terms of s. 199(3) provides credit for tax deducted at source for the purpose of s. 199. Sub-r. (2) of r. 37BA provides that if whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, has to be given to the other person and not to the deductee, provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax given to the person whom payment has been made or credit has been given. What needs to be seen is harmonious construction of s. 199(1) read with the conditions provided in r. 37BA and intention of the legislature was not to deny the credit, if the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, whereas the intention is to grant credit for the tax deducted at source on behalf of the person from whose income the deduction has been made.

4.4 <u>ANANT SINGHANIA (HUF) vs. ITO, (2023) 226 TTJ (Mumbai) 430</u>

Assessee HUF having offered the capital gains from the sale of properties to tax in its return of income and the karta having filed an affidavit stating that he has not claimed credit for TDS in his individual return though the TDS has been deducted in his individual hands, assessee HUF is entitled to the credit for said TDS.

4.5 <u>RATANLAL BIHARILAL ATAL SHRADDHAYAN vs. ITO, (2019) 198 TTJ 1019 (Nag)</u>

Compensation for acquisition of agricultural land was received for the land of HUF. HUF filed return claiming exemption u/s 10(37) and did not claim the TDS as PAN of the assessee, Karta of HUF, had been given, TDS credit appeared in 26AS in his PAN who claimed the credit and refund in his ITR. In processing his ITR, TDS credit and refund allowed. However, in scrutiny AO disallowed the same stating no income is declared by the individual. CIT(A) directed the AO to refer the matter to the concerned AO of HUF to give refund in HUF files and that AO cannot refuse to give credit to the other person in whose hands the amount is assessable, merely because TDS has been made and certificate issued in the name of the deductee i.e. the appellant. The present AO is accordingly directed to refer the matter to concerned AO of HUF in this regard.

In appeal before ITAT, allowing the appeal in favour of the assessee it held that-

When a particular income was exempt from tax in view of specific provisions provided u/s 10(37) and also fact that HUFs had declared compensation received on account of compulsory acquisition of agricultural land in their return of income and claimed exemption u/s 10(37), there was no reason for AO to deny credit for TDS merely because no income was offered to tax in hands of assessee. Compensation received on account of compulsory acquisition of agricultural land was exempt from tax u/s 10(37). HUFs had declared said compensation in return of income. When credit for TDS on account of compensation was appearing in name of assessee under his PAN in AIR data base and assessee had furnished necessary TDS certificate in his name, AO had wrongly rejected claim of credit for TDS by citing the provisions of s. 199 r/w Rule 37BA. CIT(A) although accepted that no other person had claimed credit in respect of such TDS failed to direct AO to give credit for TDS to assessee and based on TDS certificate. Hence, AO was directed to allow credit for TDS to assessee on basis of TDS certificate.

5. When TDS in 26AS in next year but credit claimed in earlier year

INTERGLOBE TECHNOLOGY QUOTIENT PRIVATE LIMITED vs. ACIT, (2024) 230 TTJ 0545 (Del), the assessee, as a consistent practice, follows an "accrual system of accounting" wherein the revenue is recognized once the service has been rendered and the bill is raised upon the service recipient. The service recipient is obligated to deduct applicable tax (TDS) under the relevant provisions of the Act while making the payment. However, in appellant's case, there is a gap in the recognition of revenue by the appellant and deduction of taxes by the receipt inasmuch as, for services provided by the appellant around year end, the revenue is recognized by the appellant in March, however, the TDS is deducted by the recipient in the next financial year when the payment is made. As a consequence, though the revenue is offered to tax in the preceding financial year, the credit of tax deducted thereon gets reflected in the next financial year. In such a situation, in terms of section 199 of the Act read with Rule 37BA(3)(ii) of the Income Tax Rules, 1962 ('the Rules'), the applicant claims credit of the taxes in the year in which the income is offered to tax.

In such a situation, in terms of section 199 of the Act read with Rule 37BA(3)(ii) of the Income Tax Rules, 1962 ('the Rules'), the applicant claims credit of the taxes in the year in which the income is offered to tax. In this background, it is submitted that during the year under consideration, the appellant rendered certain data processing and IT enabled services to M/s. Travelport International Operations Limited ('TravelPort'). Revenue from the services rendered to the said party to the extent of Rs.38,75,00,274 was offered to tax in the year under consideration (refer pages 44, 132 and 163 of PB). However, the tax on the said amount was deducted and deposited by TravelPort in the next financial year i.e., 2020-21, relevant to assessment year 2021-22 (refer page 154 of PB). Accordingly, TDS

credit of Rs.3,87,50,028 was reflecting in the Form 26AS of the applicant for assessment year 2021-22. As per the accrual method of accounting followed by the appellant read with provisions of section 199 of the Act and Rule 37BA of the Rules, since the income from TravelPort to the extent of Rs.38.75 crores was offered to tax in the year under consideration, the credit of the taxes deducted thereon, reflecting in the Form 26AS for the next year, were claimed in the year under consideration (refer pages 3 and 165 of PB). Further pertinently, since the credit of taxes to the extent of Rs.3,87,50,028 was claimed during the year under consideration, the applicant did not claim the said credit in the return of income for assessment year 2021-22.

ITAT allowed the appeal relying on the case of its group company case (discussed in the following para).

ITAT held that –

9. On a perusal of the aforesaid trail of documents, it can be concluded that there remains no doubt that both the income and TDS deducted thereon has duly been offered tax during the year under consideration and no credit for such TDS has been claimed in the subsequent assessment year.

9.1 Even otherwise, in the computation of income annexed to the assessment order, the assessing officer however did not allow the credit of Rs.3,87,50,028 claimed by the applicant without granting any opportunity and without assigning any reason for the same. Similarly, the CIT(A) dismissed the claim of the applicant for alleged want of reconciliation of TDS and the corresponding income shown, without providing the applicant with an opportunity to furnish the details. In the light of provisions of section 199 of the Act read with Rule 37BA of the rules, we are of considered view that since the income corresponding to the credit was offered to tax in the year under consideration i.e., assessment year 2020-21, the credit of taxes deducted thereon was also to be granted in the same year.

ITAT relied upon the case - **M/s. INTERGLOBE ENTREPRISES PVT. LTD vs. ACIT, (2022) 06 ITAT CK 0028, ITA 6580/DEL/2019,** wherein it is held that -

5. We have carefully considered the rival submissions. It is the case of the assessee that when the issue of availability of TDS credit in the appropriate assessment year is examined in the light of Section 199(3) r.w. Rule 37BA(3) of the Income Tax Rules, it would be clear that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. The assessee contends that the TDS credit is available in the financial year where the corresponding income has been referred by the assessee. A reference was made to the decision of the Co-ordinate Bench in the case of GREATSHIP INDIA LTD. vs. DCIT in ITA No.5562/Mum/2018 order dated 8th June, 2020 to contend that the TDS credit cannot be postponed to a different assessment year on the basis of deduction carried out by the deductor when the accrued income from such transaction has been reported in the earlier assessment year.

6. A combined reading of Section 199(3) r.w. Rule 37BA(3) makes the position of law clear that credit for TDS is available in the year in which the income is reported and as a corollary, should not be deferred to some other assessment year. In the instant case, the Revenue has allowed the credit in the subsequent assessment year when the TDS is shown to have been credited in the form 26AS. However, as stated on behalf of the assessee, the corresponding income will not be found to be recorded and therefore such direction would belie the letter and spirit of Section 199(3) and Rule 37BA(3) thereto. Thus, on first principles, we are inclined to agree with the stand taken on behalf of the assessee for eligibility TDS credit in the Assessment Year 2016-17 itself when income has been claimed to have accrued/arisen and included for determination to chargeable income."

6. When only partial income is taxable in assessee's hands and remaining in other assessee's hands

SUNITA DEVI vs. ACIT, ITAT NEW DELHI, ITA No.4473/Del./2012: AY: 2009-10.

Assessee-Individual- received commission of Rs. Rs. 2,61,18,048/- from M/s. Arvind mill but credited Rs.1,53,18,478 and claimed refund of entire TDS. The balance amount of commission was transferred to her step-son as per High Court order in their dispute treating it as diversion of income on the account of overriding title as per SC judgment in RAJA BIJOY SINGH DIDHURIA vs. CIT,1 ITR 135(PC). AO allowed income as it is, but, allowed only proportionate credit of TDS referring to the provisions of Section 199 of the Act. CIT(A) disallowed the appeal.

ITAT analysed the Sec.199 and Rule 37BA as under-

10. On plain reading of section 199 of the Act and rules made thereunder, it is apparent that sub section 2 and 3 of the section are not applicable to the facts of the case in hand. Further, sub Rule (2) and (3) of Rule 37BA of the Income-tax Rules are also not applicable to the facts of the case in hand, as the income of the assessee is not falling under any of the clauses of sub Rule (2) and issue of credit in multiple years is also not involved in the case in hand. So, only sub section (1) of section 199 of the Act, and sub Rule (1) and (4) of the Rule 37BA of the Rules are related to the case of the assessee. The first limb of the said subsection refers to the tax deducted and paid to the Central Government. The second limb of the sub section refers to allowing of credit of the tax so deducted and paid to central government, in the hands the person from whose income, the tax has been deducted. So, a plain and literal interpretation of sub section (1) of section 199 leads to result that the credit of the tax deducted has to be given in the hands of the deductee i.e. the person from whose income the deduction was made. Thus, said sub section nowhere says that credit of TDS should be restricted only to the amount of income or receipt offered in the return of Income or in the Profit and Loss Account. Further, sub rule (1) of rule 37BA of the Rules also emphasize to allow the credit in the hands of deductor on the basis of the information related to deduction

of tax furnished by the deductor. With effect from 1.4.2008, the section 199 of the Act has undergone a change and the requirement of TDS certificate for tax credit has been dispensed with and now the credit is being allowed as per Rule 37BA(4) of the Rules on the basis of information available in the Income Tax Statement (ITS) of the assessee on the data base of Income Tax Department or on the basis of form no. 26AS of Income Tax forms. In the case of the assessee the information as to the income and the tax deducted was available in the ITS. The Assessing Officer, has accepted the diversion of income in the hand of Shri Kapil Ahluwalia but denied the credit of the total tax deducted by the deductor. We find that the action of the assessing officer was on the basis of the incorrect interpretation of the sub section (1) of section 199 of the Act.

It is obvious from various sample situations discussed hereinabove that, once the TDS is deducted and deposited to the Govt., the credit for TDS has to be allowed, may be in the hands of the person in whose 26AS it appears or somebody else in whose hands the income may be taxable or to whom it rightfully belongs. The year of allowing TDS credit may also be difference dependent upon the facts. But in any case, it is not possible to retain the TDS by the Dept. without allowing credit to anybody. Rules are just a handmaid of justice which cannot override the law and cannot be applied to reject the rightful claim for the TDS.