आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री मनु कुमार गिरि ,न्यायिक सदस्य एवं श्री जगदीश , लेखासदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND SHRI JAGADISH, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2945/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2023-24)

K.Venkatesan (HUF) 234, Brindavan Road, 3rd Cross, Fairlands, Salem-636 016.	Vs	**The ACIT** Circle-I(1) Salem.
PAN : AAHHK-3502-Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. P.M. Kathir, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Vijaideepan, JCIT

सुनवाईकीतारीख/Date of hearing	:	13.02.2025
घोषणाकीतारीख /Date of Pronouncement	:	07.05.2025

आदेश / O R D E R

PER MANU KUMAR GIRI, JM:

The captioned appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)(NFAC) Delhi [CIT(A)] dated 02.09.2024 for Assessment Year 2023-24.

2. 1.Addl/JCIT (Appeals) is not justified in confirming that Rs. 17,434/- alone, out of tax
of Rs. 11,70,000/- paid at source, is to be given credit.
2. Addl/JCIT (Appeals) is not correct in reasoning that Exempt Income Schedule in
Return Form was not filled, while issue involved does not relate to income; TDS Schedule was however filled in e-return with Rs. 10.50 Crores, Agricultural Land Sale Amount), narrating it as "Exempt Income".
"Non mentioning of such income in one of columns of income tax return was to be understood as *an inadvertent mistake because in same Form of Return of Income, at more than one place,* assessee *had shown such income to be entitled for* concessional *rate of taxation"* - (2015) 155 ITD 41-44 CCH 734 (Mum) H- Himanshu Nalin Kaj vs. DCIT- ITA No. 6073/Mum/2013.
4. It ought to have been appreciated that (i) Rule 37BA(1) and 37BA(4)(ii) require credit to be given for TDS and, (ii) Rule 37BA(3)(i) applies only when more than one
assessment year are involved.

5. Addl/ JCIT (Appeals) should have accepted that amount of gross receipts in Form 26AS could exceed total receipts in Return, as the former includes income exempt u/s. 10(37).

6.Credit for a part of TDS should not have denied solely on a ground that corresponding gross receipts are not in Return, though claim of TDS is different from corresponding income (450 ITR 317 Calcutta High Court - PCIT v. Smt. Nirmali Bhadra and 271 CTR 89 Gujarat High Court - Sumit Devendra Rajani vs. ACIT & Anr. relied on.)

7.Addl/JCIT (Appeals) ought to have decided that such a debatable issue was outside the purview of Section 143(1)(a) to restrict TDS claim, as none of its sub-clauses permits such restriction.

3. Brief facts are as follows:-

The assessee is an HUF filed its return of income on 30.07.2023 for the AY 2023-24 declaring income of Rs.12,22,520/-. During the financial year 2022-23, the assessee sold an agricultural land of 2.28.5 acres at Yercaud to M/s. Ebenezer Marcus Trust. The buyer has deducted TDS @1% amounting to Rs.10,50,000/- u/s.194IA of the Act on the sale consideration of Rs.10.50 crores. Since, the land sold by the assessee being agricultural land, no TDS was required to be deducted by the purchaser and inadvertently it was deducted. Since the assessee has not shown the receipts as exempt income in ITR, though claimed to be exempt income, but corresponding TDS amount was claimed, the CPC has denied said TDS amounting to Rs.10,50,000/- to the assessee on account of mismatch of corresponding income.

4. Aggrieved, the assessee challenged order of assessment before the CIT(A). The CIT(A) has dismissed the appeal of the assessee by upholding order of the CPC u/s.143(1) of the Act as under:

"The appellant had claimed that it has earned exempt capital gain on sale of agricultural land amounting to Rs. 10.5 Crores on which the purchaser had deducted TDS @ 1% being Rs. 10.5 Lakhs by mistake and since the receipts of the sale of rural agricultural land are exempt from taxation, so it had not shown such receipts in ITR but corresponding TDS was claimed by it but CPC has denied the said TDS on account of mismatch of corresponding income. I have gone through the intimation order passed by CPC A.O. and the submissions made by the appellant during the course of appeal proceedings. It is a fact that appellant has not shown the corresponding receipts (though claimed to be exempt) in its ITR but have asked for credit of corresponding TDS reflected in 26AS. I am of the opinion that for any tax credit claim which is available in 26AS, the corresponding income must be shown in ITR. For exempt income, the ITR have specific schedule named "Exempt Income Schedule". Since, the appellant had not shown any such exempt income in the ITR, the action of CPC in denying the credit of TDS amounting to Rs. 10.5 lakhs on such exempt income not reflected in ITR is correct and thus, the action of CPC A.O. is upheld. The grounds raised by appellant in this regard are thus dismissed accordingly."

Aggrieved, assessee is in further appeal before us.

5. The ld.A.R. Submitted that the assessee sold immoveable property being agricultural rural land and the purchaser inadvertently deducted TDS of Rs.10,50,000/- on the said transaction. The assessee filed return of income for AY 2023-24 declaring income from house property of Rs.8,40,000/-, income from other sources (interest income) of Rs.3,82,524/- and agricultural income of Rs.4,13,150/-. The assessee had not shown any capital gains on the sale of land as the same is exempt from taxation. The reason given by the AO, CPC at page 14 of the intimation was that the total receipts as per the form 26AS (Rs.10,62,00,000/-) were higher than the total receipts as per Rule 37BA. The difference in the gross receipts shown in the ROI and available in Form 26AS is the exempt sale consideration of Rs.10,50,00,000/- which was not required to be shown in the return of income. The assessee further

submitted that Rule 37BA of the Income Tax Rules, 1962 does not apply to the appellant for the reason that it only applies in the case of income that is assessable to tax.

6. The ld. D.R. submitted that the income was not reflected whether it is an agricultural land and the selling of the said land, therefore the Assessing Officer as well as CIT(A) has rightly made the addition. It is clear that if claim should be made in return of income and in absence of the same, the assessee is not entitled for any claim as such since there is no corresponding income in the return of income. The assessee's claim for TDS was rightly disallowed by the Assessing Officer which was confirmed by the CIT(A).

7. We have heard both the parties and perused material on record. Section 194IA which has been invoked in the instant case reads as under:-

> *"Payment on transfer of certain immovable property other than agricultural land 194-IA.*
> *(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the Rajesh Kumar Nahar & Othrs.vs. ITO(TDS) account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon."*
> *(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.*
> *(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.*
>
> *Explanation.--For the purposes of this section,--*
>
> *(a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub- clause (iii) of clause (14) of section 2;*
>
> *(b) "immovable property" means any land (other than agricultural land) or any building or part of a building."*

Rule 37BA of the Income Tax Rules, 1962 which has been invoked in the instant case reads as under:-

> *37BA. Credit for tax deducted at source for the purposes of section 199.*
>
> *(1)Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.*
> *(2)(i)Where under any provisions of the Act, the 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, shall 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 referred to in sub-rule (1).*
> *(ii)The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*
> *(iii)The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.*
> *(3)(i)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****.*
> *(ii)Where tax has been deducted at source and paid to the Central Government and* ***the income is assessable over a number of years****, credit for tax deducted at source shall be allowed across those years in the same proportion* ***in which the income is assessable to tax****.*
>
> [Emphasis supplied by us]

8. From the perusal of the section 194IA, it is ample clear that this section 194IA applies to immovable property other than agricultural land. Rule 37BA of the Income Tax Rules, 1962 also does not apply to the appellant for the reason that it only applies in the case of income that is assessable to tax. We also find that the AO, CPC does not take into account the agricultural income declared in the return

of income when comparing the gross receipts of the ROI with that of the Form 26AS. This is evident from the Rule 37BA working of the AO, CPC at page 14 of the intimation. Further, we note that the AO, CPC has not taken into consideration the agricultural income shown in the schedule EI. Therefore, we accept the contention of the ld. Counsel for the assessee that even if the assessee had shown the exempt sale consideration of Rs.10,50,00,000/- as agricultural income in the return of income, the present restriction of TDS would still have been carried out owing to the incorrect application of Rule 37BA.

9. The above factual matrix, we direct the AO to give credit to the entire TDS claimed of Rs.11,70,000/- appearing in the Form 26AS and claimed by the appellant in the return of income.

10. In result, appeal of the assessee is allowed.

Order pronounced in the open court on 7th May, 2025

Sd/-	Sd/-
(**जगदीश**)	**(मनु कुमार गिरि)**
(Jagadish)	(Manu Kumar Giri)
लेखा सदस्य / Accountant Member	**न्यायिक सदस्य**/ Judicial Member

चेन्नई/Chennai,
दिनांक/Date:07.05.2025
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. Appellant
2. Respondent
3. आयकर आयुक्त/CIT Chennai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.