

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SONJOY SARMA, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 291, 292, 293 & 294/KOL/2025
Assessment Years: 2019-20, 2020-21, 2021-22 & 2022-23**

Lovely Das	Vs.	Addl/JCIT, Nashik
(Appellant)		(Respondent)
PAN: AGVPD9983E		

Appearances:

Assessee represented by : Manish Tiwari, FCA.
Department represented by : Soumitra Ghosh, Addl. CIT, Sr. DR.
Date of concluding the hearing : 28-July-2025
Date of pronouncing the order : 04-August-2025

ORDER

PER BENCH:

These four appeals filed by the assessee are against the separate orders of the Addl/JCIT(A)-1, Nashik [hereinafter referred to as the 'Ld. Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2019-20, 2020-21, 2021-22 & 2022-23 dated 02.01.2025, which have been passed against the intimations dated 26.02.2020, 30.09.2021, 26.05.2022 & 08.11.2022, respectively issued u/s 143(1) of the Act. Since the issues in all the four appeals are

common, they were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

I. ITA No. 291/KOL/2025; AY 2019-20:

“1. That the Learned Assessing Officer and ADDL/JCIT(A)-1- NASHIK has erred in denying the assessee the tax credit for Rs.22,06,321 being TDS in the name of her deceased husband Jagbandhu Das vide order u/s 143 (1) of the IT Act, 1961 dated 26/02/2020 and DIN: CPC/1920/A3/1966059404 and Appeal DIN & Order No: ITBA/APL/S/250/2024-25/1071817301(1) even though the assessee has offered e corresponding income in the name of Late Jagbandhu Das against the aforesaid TDS for taxation in the return of income filed by her.

2. That the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK also has erred in denying the assessee the credit for TDS for the reason that there was mismatch in TDS claimed by the assessee which was in the name of the Late Jagbandhu Das (husband of the assessee) even though the corresponding income was offered by the assessee and accepted by the Assessing Officer.

3. That the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK also has erred in accepting the income of Late Jagbandhu Das, husband of the assessee, as the income of the assessee but denying the assessee credit for corresponding TDS which is naturally in the name of Late Jagbandhu Das.

4. That the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK also has erred in computing Interest under Section 234A of Rs.28,421, 234B of Rs.3,12,631 and 234C of Rs. 1,75,551 as against the assessee's computation of Rs.6,358, Rs.48,814 and Rs.64,129 respectively under the said Sections.

5. That the action of the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK also in denying the genuine tax credit in the form of TDS to the assessee is bad in law and against the pronouncements of courts of law on this issue.

6. That the assessee humbly craves leave to add, delete or modify all or any of the grounds of appeal.”

II. ITA No. 292/KOL/2025; AY 2020-21:

“1. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in denying the assessee the tax credit for Rs. 17,54,565 being TDS in the name of her deceased husband Jagbandhu Das vide order u/s 143 (1) of the IT Act, 1961 dated 30/09/2021 and DIN: CPC/2021/A3/176200329 and appeal DIN & Order No: ITBA/APL/S/250/2024-25/1071819948(l) even though the assessee has offered the corresponding income against the aforesaid TDS for taxation in the return of income filed by her.

2. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in denying the assessee the credit for TDS for the reason that there was mismatch in TDS claimed by the assessee which was in the name of the Late Jagbandhu Das (husband of the assessee) even though the corresponding income was offered by the assessee and accepted by the Assessing Officer.

3. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in accepting the income of Late Jagbandhu Das, husband of the assessee, as the income of the assessee but denying the assessee credit for corresponding TDS which is naturally in the name of Late Jagbandhu Das.

4. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in computing Interest under Section 234B of Rs.3,07,692 and 234C of Rs. 1,16,824 as against the assessee's computation of Rs. NIL and Rs.28,701 respectively under the said Sections.

5. That the action of the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also in denying the genuine tax credit in the form of TDS to the assessee is bad in law and against the pronouncements of courts of law on this issue.

6. That the assessee humbly craves leave to add, delete or modify all or any of the grounds of appeal.”

III. ITA No. 293/KOL/2025; AY 2021-22:

“1. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK has erred in denying the assessee the tax credit for Rs. 15,58,259 being TDS and Rs. 13,693 being TCS both in the name of her deceased husband Jagbandhu Das vide order u/s 143(1) of the IT Act, 1961 dated 25/06/2022 and DIN: CPC/2122/A3/230597483 & Appeal no: NFAC.

2. /2020-21/10244985 vide DIN & order No:-ITBA/APL/S/250/2024-25/1071824927(1) under section 250 even though the assessee has offered the corresponding income for taxation.

3. That the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK has erred in denying the assessee the credit for TDS and TCS for the reason that there was mismatch in TDS and TCS claimed by the assessee which was in the name of the Late Jagbandhu Das (husband of the assessee) even though the corresponding income was offered by the assessee and accepted by the Assessing Officer.

4. That the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK has erred in accepting the income of Late Jagbandhu Das, husband of the assessee, as the income of the assessee but denying the assessee credit for corresponding TDS and TCS which is naturally in the name of Late Jagbandhu Das.

5. That the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK has erred in computing Interest under Section 234B of Rs. 1,83,651 and 234C of Rs. 1,14,497 as against the assessee's computation of Rs. NIL and Rs.40,311 respectively under the said Sections.

6. That the action of the Learned Assessing Officer and ADDL/JCIT(A)-NASHIK in denying the genuine tax credit in the form of TDS & TCS to the assessee is bad in law and against the pronouncements of courts of law on this issue.

7. That the assessee humbly craves leave to add, delete or modify all or any of the grounds of appeal."

IV. ITA No. 294/KOL/2025; AY 2022-23:

"1. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in denying the assessee the tax credit for Rs. 16,96,967 being TDS vide order u/s 143(1) of the IT Act, 1961 dated 08/11/2022 and DIN: CPC/2223/A3/314946180 & Appeal No: NFAC/2021-22/10234192 and Din & Order No:-ITBA/APL/S/250/2024-25/1071820949(1) even though the assessee has offered the corresponding income for taxation.

2. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in denying the assessee the credit for TDS for the reason that there was mismatch in TDS claimed by the assessee which was in the name of the Late Jagbandhu Das (husband of the assessee).

3. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in accepting the income of Late Jagbandhu Das, husband of the assessee, as the income of the assessee but denying the assessee credit for corresponding TDS which is naturally in the name of Late Jagbandhu Das.

4. That the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also has erred in computing Interest under Section 234B of Rs.2,14,656 and

234C of Rs. 1,48,322 as against the assessee's computation of Rs.78,904 and Rs.62,627 respectively under the said Sections.

5. That the action of the Learned Assessing Officer and ADDL/JCIT(A)-1-NASHIK also in denying the genuine tax credit to the assessee is bad in law and against the pronouncements of courts of law on this issue.

6. That the assessee humbly craves leave to add, delete or modify all or any of the grounds of appeal.”

2.1 In ITA No. 293/KOL/2025; AY 2021-22, Ground No. 1 has been inadvertently split into Ground Nos. 1 and 2.

3. We shall first take up the appeal in ITA No. 291/KOL/2025; AY 2019-20 as the lead case. Brief facts of the case mentioned in the Statement of Facts are that the assessee is an Individual and she e-filed her return of income for the said assessment year on 12/11/2019 declaring total income of Rs. 1,36,79,759/- and claiming credit of taxes paid of Rs. 46,52,910/-. However, the Ld. Assessing Officer, the Asst. Director of Income Tax, CPC, Bengaluru vide the Intimation issued u/s 143 (1) of the Act on 26/02/2020 accepted the returned income but allowed credit of taxes paid of Rs.24,46,589/- only as against the tax credit claimed at Rs. 46,52,910/- and raised consequential demand of Rs.25,98,755. Details of credit of taxes claimed by the assessee and credit allowed by the department have been mentioned as ₹46,52,910/- and ₹24,46,589/- respectively and a sum of ₹22,06,321/- being the TDS in the name of the husband has not been allowed. In the return of income, in addition to her own income of Rs.59,33,102/- (income from other sources-interest income), the assessee also offered total income of Rs.73,13,808/- comprising income from M/s Elco Enterprise and Interest income from Bank (both in the name of Late Jagbandhu Das) for taxation and corresponding TDS of Rs.28,42,910/- (in the assessee's

name Rs.6,36,589/- and in the name of Late Jagbandhu Das Rs.22,06,321/-) against the total income was claimed by the assessee in the return of income filed by her. M/s Elco Enterprise is a proprietorship concern, of which Late Jagbandhu Das, the husband of the assessee, was the proprietor. After his death on 15.06.2016, the assessee (wife of Late Jagbandhu Das) being the legal heir succeeded the proprietorship concern and became the proprietor. Since the income from the said proprietorship concern as well as the interest income in the name of Late Jagbandhu Das were duly offered for taxation by the assessee, the corresponding TDS was claimed by her in the ITR. However, the Assessing Officer did not grant the assessee credit for TDS in the name of the Late Jagbandhu Das by referring to the unmatched TDS. The short credit of TDS on this count is Rs.22,06,321/-. Consequential excess interest under Section 234B and 234C of the Act was also charged.

4. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. Addl./Joint CIT(A), who, vide order dated 02.01.2025, dismissed the appeal. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard and the record and the submissions made have been examined. The Ld. AR submitted that even though the income of the deceased husband was shown in the return of income of the assessee, as she had taken over and was running the proprietorship concern along with the interests from the bank in respect of the account in the name of her husband, all were shown in her return of income, the Ld. AO ought to have allowed the credit for the TDS made. The Ld.

DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. The Ld. CIT(A) has reproduced the provisions of Rule 37BA of the Income Tax Rules, 1962 and held as under while dismissing the appeal of the assessee:

“In view of the Rule 37BA of the Act, the appellant is not eligible for claiming TDS of Rs. 22,06,321/- which is reflecting on the name of her deceased husband. As per the death certificate issued by Authority i.e. New Town Kolkata Development Authority, Department of Health & Family Welfare, Govt of West Bengal, it is seen that the husband of the appellant Shri Jagabandhu Das passed away on 15/06/2016 and the matter pertains to Assessment Year A.Y.2019-20. The appellant must have updated the records in the books of the deductor to deduct the TDS on her name but the appellant has failed to do so. Further, the appellant is a separate entity from her husband, the Appellant, the TDS credit now cannot be given to the appellant, even though she has declared the corresponding income, in her Return of Income, on his own accord. In this case, as per the Appellant, the due credit, part, is already appearing in the 26AS statement of his late husband. Considering the facts as mentioned above, the Appellant's ground, for allowing the TDS deducted, on the income earned by his late husband and TDS deducted in his late husband's name, cannot be claimed by the Appellant. The appellant must have filed separate return of income as legal heir or legal representative of the deceased Shri Jagabandhu Das to claim the TDS deducted. In view of the facts of the case, the ground no.1 raised by the appellant is dismissed.”

7. Before us, the Ld. AR has relied upon the following judicial pronouncements and submitted as under in the Statement of Facts filed which is extracted as under:

i. *The Hon'ble Andhra Pradesh High Court in the case of Commissioner of Income-tax-1 Vs Bhooratnam & Co. (I.T.T. Appeal No. 117 & 222 OF 2012), date of order: 23/11/2012, wherein it is held that Credit for TDS is allowed if Income shown in certificate is offered for tax despite certificate is not in Assessee's name.*

ii. *In the case of Sh. Varinder Pal Vs ITO, date of Order: 31/01/2023, ITA No. 33/Asr/2022, the Hon'ble ITAT (Amritsar) it is held that as income of the deceased person offered to tax, credit of TDS cannot be denied merely because*

it appears in the name of deceased mother. A particular income cannot be taxed twice under the law.

iii. Also, in the case of *Smt. Vijay Luxmi Gupta vs. Income Tax Officer, Ward-1 (4), the Hon'ble ITAT – Allahabad Bench 'SMC' on 22/03/2021 (I.T.A. No. /Kol/2022 No. 262/ALLD/2018)*, held that the TDS credit cannot be denied to the assessee due to the reasons that as per the Form No. 26AS the TDS was not in the name of assessee but it was in the name of deceased husband.

7.1 It is also submitted by the Ld. AR that in the instant case, in addition to her own income of Rs.59,33,102/-, since the assessee has offered the income of Rs.73,13,808/- (which is the income of the proprietorship firm of her deceased husband and his interest income, on whose behalf the return of income for the said year was not filed nor the tax credit for the TDS of Rs.22,06,321/- on his behalf was made) for taxation in her return of income, she is entitled to claim the corresponding TDS of Rs.22,06,321/- as tax credit in terms of Rule 37BA(3)(i) of the Income Tax Rules, 1962 and as held in the judicial decisions referred to hereinabove.

8. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). As per sub-rule (2) of Rule 37BA and sub-rule 3(i) thereof, extracted as under from the order of the Ld. CIT(A), if the income is assessable in the hands of any other person, the credit of TDS shall be given to him for the year in which the income is shown. The relevant extract is as under:

“(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.”

9. The Ld. AO is, therefore, directed that in view of the judicial pronouncements cited by the assessee, the credit for TDS made in the name of her deceased husband shall be allowed to her as per law as the income has been shown by her in her return of income and the assessee may approach the deductor to get the records corrected as required under rule 37BA, if required, so that the TDS is reflected in her PAN and file the evidence before the Ld. AO that the credit for the TDS has not been availed by any other person. For statistical purposes, the appeal of the assessee is allowed.

10. Since the issues raised in other assessment years are similar, hence the findings for A.Y. 2019-20 are *mutatis mutandis* applicable for other three assessment years as well and the appeals for those three A.Ys. are also allowed for statistical purposes.

11. In the result, all the four appeals are allowed for statistical purpose.

Order pronounced in the open Court on 4th August, 2025.

Sd/-

[Sonjoy Sarma]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 04.08.2025

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Lovely Das, 141/1/23, South Sinthee Road, Sinthee, Kolkata, West Bengal, 700050.**
2. **Addl/JCIT, Nashik.**
3. Addl/JCIT(A)-1, Nashik.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata