IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "D", MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

AND

SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 5338/Mum/2025 (A.Y: 2013-14)

Daiwa Capital Markets India Private Limited Office No. N10 & N11, 9th Floor, Dextrus-Peninsula Tower, Peninsula Corporate Park, G. K. Marg, Lower Parel, Delisle Road, Mumbai-400 013 **PAN: AACCD7178B**	*Vs.*	**ACIT Circle 4(1)(1),** Room no. 640, 6th floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Ms. Shivali Mhatre, Ld. AR**
Department Represented by	**:**	**Shri Annavaram Kosuri, Ld. DR**
Date of conclusion of Hearing	**:**	**03.11.2025**
Date of Pronouncement	**:**	**20.11.2025**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order of Learned Commissioner of Income Tax (Appeals) / National Faceless

Appeal Centre (NFAC), Delhi [hereinafter referred to as the "*CIT(A)*"], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] dated 10.06.2025 for the A.Y. 2013-14, wherein denial of TDS credit by the AO vide order giving effect dated 29.05.2023 was confirmed by the Ld. CIT(A) on the ground that there was no valid claim made in the return of income regarding additional TDS claim.

2. The brief facts of the case are that, the assessee filed its original return of income on 22/11/2013 for AY 2013-14. In the original return of income, the assessee claimed TDS credit of Rs. 1,78,80,099/- as reflected in Form 26AS at that point in time. Subsequently, the assessee filed revised return on 2nd March 2015 and in the interim period between original return of income and revised return of income, a party viz. Prime Focus Ltd deducted and deposited tax with the credit of Central Government amounting to Rs. 73,24,074/- but did not inform the assessee about the same. Thus, at the time of filing of revised return, the assessee was unaware of the additional TDS credit of Rs. 73,24,074/- and inadvertently missed to claim the genuine TDS credit in the revised return of income as well. However, the assessee had offered the corresponding income of Rs. 7,32,40,740/- pertaining to Prime Focus

Ltd at the first instance itself i.e. original return followed with revised return of income.

3. Further, the case was selected for scrutiny and assessment proceedings were completed under section 143(3) of the Act vide order dated 19/01/2017 whereby the AO made a transfer pricing adjustment which was subsequently deleted by the Ld. CIT(A). During the proceedings, the assessee was not aware of the genuine TDS credit and accordingly, the same was not claimed by the assessee. However, at the time of preparing an application to be filed before the AO to give effect to the order passed by the Ld. CIT(A), the assessee came to know from the revised Form No. 26AS, that Prime Focus Ltd had deposited the TDS amounting to Rs. 73,24,074 and therefore, the assessee vide application dated 13/12/2022 requested the AO to grant TDS credit of Rs. 73,24,074/- while passing the order giving effect ('OGE') pursuant to Ld. CIT(A)'s direction. The AO while passing the order giving effect rejected the assessee's plea of granting TDS credit of Rs. 73,24,074/- on the ground that the same was not claimed in the return of income by ignoring the fact that the said credit was genuine in nature.

4. Aggrieved by the order of AO, assessee preferred the appeal before the Ld. CIT(A). However, Ld. CIT(A) rejected the plea of the assessee vide impugned order.

5. Aggrieved by the impugned order, assessee preferred the appeal before us and has raised the following grounds:-

> *"**General***
>
> *1. On the facts and in the circumstances of the case, and in law, the Ld. Assessing Officer ('AO') erred and the Hon'ble Commissioner of Income-tax (Appeals), National Faceless Appeal Centre ['CIT(A)'], further erred in not granting TDS credit as reflected in Annual Tax Statement (Form 26AS).*
>
> ***Non-grant of TDS credit of INR 73,24,074/-***
>
> *2. On the facts and in the circumstances of the case and in law, the Ld. AO erred and the Hon'ble CIT(A) further erred in not granting TDS credit of INR 73,24,074 (pertaining to Prime-Focus), while passing the Order Giving Effect, which is against constitutional rights and principles of natural justice.*
>
> *3. The Ld. CIT(A), further, fell in error of law in upholding the view of the Ld. A.O. in denying the credit for TDS merely on technical grounds without appreciating that TDS was claimed on the basis of Form No. 26AS/AIS report uploaded by the department on the IT Portal of the Appellant. Further, it is well established judicial precedent that the revenue cannot take benefit of Appellant's ignorance. The Appellant, therefore, humbly prays that denying the claim of TDS available to the Appellant is against the principals of judicial discipline and the same may be allowed.*

4. The Appellant prays that the Ld. AO be directed to grant the tax credit of INR 73,24,074 along with interest under section 244A of the Act.

The Appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.

Further, the Appellant craves leave to submit such facts/documents/evidence in the course of hearing as may be necessary."

6. We have heard Ld. AR and Ld. DR. At the outset, Ld. AR submitted on behalf of the assessee that it was an inadvertent error of not claiming TDS credit in return of income which does not mean that assessee has forgone his right to claim the tax credit. Secondly, the denial of credit regarding the said TDS by the AO as well as Ld. CIT(A) is against the principle of natural justice and legal settled precedents and shall amount to double taxation of the assessee which is not permissible in law. Thirdly, it is in consonance of Article 265 of the Constitution of India which mandates that 'no tax shall be levied or collected except by authority of law; if a tax has been paid in excess of the tax specified, the same has to be refunded.' It is therefore stated that denial of tax credit of the TDS duly reflected in the documents of revenue itself is in violation of legal precedents and shall amount to unjust enrichment on the part of the revenue and wrongful loss to the assessee and as such the impugned

order is liable to be set aside and the AO be directed to grant the TDS credit amounting to Rs. 73,24,074/- to the assessee. In support of his arguments, Ld. AR relied on the decision of Hon'ble High Court of Allahabad in the case of U.P. Rajya Nirman Sahakari Sangh Ltd. vs. Union of India Min. of Finance Dept. of Revenue (2025) 179 taxmann.com 615 (Allahabad) order dated 8th October 2025 wherein the Hon'ble Allahabad High Court has relied the judgment in Its Own Motion vs. CIT (2013) 31 taxmannc.com 31 (Delhi HC) wherein it was held as under:-

> *"The statutory powers given to the Assessing Officer are sufficient and should be resorted to and the assessee cannot be left to the mercy or the sweet will of the deductors. Therefore, we direct that when an assessee approaches the Assessing Officer with requisite details and particulars, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting point for the Assessing Officer to2013:DHC:1392-DB W.P. (C) Nos. 2659/2012 & 5443/2012 Page 41 of 45 ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle in case he requires clarification or confirmation. He is also at liberty to get in touch with deductor by issuing a notice and compelling him to upload the correct particulars/details. The said exercise must be and should be undertaken by the Revenue, i.e. the Assessing Officer as an assessee who suffers in such cases is not due to his fault and can justifiably feel deceived and defrauded. We do not accept the stand of the Revenue that they can only write a letter to the deductor to persuade him to correct the uploaded entries or to upload the details."*

7. Further, the Hon'ble Allahabad High Court in the same decision has relied on the judgment in the case of Rakesh Kumar Gupta vs. Union of India (2014) 46 taxmann.com 447 (Allahabad HC) wherein it was held that "the respondents have denied refunding the TDS on the ground that the refund would only be granted when the TDS matches with the details mentioned in Form 26AS and the mismatching is not attributable to the assessee and the fault solely lay with the deductor. The petitioner has also made out a case for payment of interest that the delay in refunding the amount was attributable solely with the Income Tax Department and there is no fault on the part of the assessee." Ld. AR further submitted that Hon'ble Allahabad High Court in the same decision has relied the judgment of Hon'ble Delhi High Court in Its Own Motion (supra) that when an assessee approaches the Assessing Officer with requisite details and particulars in the forms of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee.

8. Ld. AR further relied on the judgment of ITAT in the case of Damco India (Pvt.) Ltd. vs. CIT (2023) 153 taxmann.com 636 (Mumbai Trib.) wherein it was held that section 219 of the Act also mandates that the credit of advance tax shall be given to the assessee in the regular assessment. Thus, the inadvertence on the part of the assessee to claim the credit for the advance tax while filing its return of income or filing the revised return of income in this regard does not absolve the AO from its statutory duty as per section 219 of the Act to grant the credit in the regular assessment, particularly when the said amount is duly reflected in Form 26AS which forms part of the record of the Revenue.

9. Ld. AR further relied on the decision of Hon'ble Delhi High Court in Ess Singapore Branch vs. DCIT (2024) 165 taxmann.com 645 (Delhi) wherein it was held that regard must also be had to the fact that the TDS which had been duly deposited becomes liable to be treated as tax duly paid in terms of Section 199 and interest thereon would consequently flow from the first day of April of the relevant AY to the date on which the refund is ultimately granted by virtue of Section 244A(1)(*a*) of the Act. The contention of the respondents, therefore, that interest would flow only from the date of the order of the Tribunal is thoroughly

misconceived. In this case, the same contention of the revenue that the amounts reflected in Form 26AS are not disputed, but the assessee did not claim the amount in its income tax return, TDS credit is liable to be denied, was not accepted by the Hon'ble High Court on the ground that the reference to Section 239 is clearly misconceived because the claim of the assessee for being accorded credit of the entire TDS as reflected in Form 26AS was thus liable to be accorded recognition along with interest to be computed in accordance with Section 244A of the Act.

10. On the other hand, Ld. DR on behalf of the revenue while relying on the orders of AO as well as Ld. CIT(A) submitted that assessee has not followed the rule and procedure for claiming credit of TDS as the same was never claimed in the ITR which was the requirement of law/ Income Tax Rules and the same has been claimed after the expiry of 8 years without any justified reason of delay, therefore the impugned order is justified and the appeal of the assessee is liable to be dismissed.

11. We have carefully examined the record and considered the rival submission of both the parties. Ld. AO has observed in para no. 2 of its order as under:-

"2. Further, vide application dated 13 December 2022, the Assessee stated that at the time of filling of return of Income, the assessee inadvertently missed to claim TDS credit of INR 73,24,074 and thereby requested us to provide credit of the same at the time of passing order giving effect. However, as per the provision of the I.T. Act,1961, the Assessee shall be eligible to claim TDS credit as reported in the return of Income. Accordingly, since TDS amount of INR 73,24,074 was not claimed in return of Income by the assessee, the said extra credit of Rs. 73,24,074/- is not allowed to the assessee."

12. Further, Ld. CIT(A) has confirmed the said order of AO while observing as under:-

"6. Ground No.1 to 4 are on the singular issue of granting of credit for TDS over and above that claimed in the return of income. Therefore, all the grounds are dealt with together and decided as follows.

6.1. The undisputed facts of the case are that the appellant filed its original return of income on 22.11.2023 claiming credit of TDS for an amount of Rs.1,78,80,099/-. Thereafter, the appellant filed a revised return on 02.03.2015, without making any fresh claim for TDS. It is claimed by the appellant that one of the parties had deducted TDS of Rs.73,24,074/- after the filing of original return by the appellant but it was not intimated to it and hence no claim was made in the revised return filed subsequently on this additional TDS.

6.2. Later on, the case was selected for scrutiny and order u/s. 143(3) was passed on 19.01.2017 making Transfer Pricing adjustments. Even during the course of scrutiny assessment proceedings before the AO also, no fresh claim for additional TDS credit was ever made by the appellant.

6.3. After the completion of scrutiny assessment, appellant preferred an appeal before CIT(A) wherein only the TP adjustments were contested. There was no ground taken in appeal by the appellant regarding any short credit of TDS. Appeal was disposed of by CIT (A), granting the relief on TP adjustment as sought by the appellant, vide order No. CIT (A)-55/IT-2015/DCIT-14(1)(2)/2016-17 dated 12.10.2017.

6.4. Even thereafter the disposal of appeal, the appellant did not seek any remedy under the Act for claiming the additional credit for TDS, for over 5 years. It was only on 13.12.2022, i.e., more than 9 years from the end of the relevant previous year, that the appellant raised this issue for the first time before the AO.

6.5. Admittedly, there was no valid claim made in the return of income filed so far regarding this additional TDS and the claim that the corresponding income had been already offered to tax in the return of income filed was also never tested before the AO or the CIT (A).

6.6. The only proceedings under law pending before the AO was to give effect to the directions of the CIT(A) on the issue of TP adjustment which the AO had rightly done. Therefore, no legal or factual basis lies for appealing against the said giving effect order passed u/s.143(3) r.w.s. 250 of the Act.

6.7 The provisions for giving credit to TDS and claiming refund are clearly laid down in the Act. Section 199 which deals with Credit for tax deducted empowers the Board to make such rules as may be necessary, including for the purposes of giving credit and also the assessment year for which such credit may be given. Accordingly, Rules have been enacted to govern the process of giving credit for TDS.

6.8. Rule 37BA of Income Tax Rules, thus, clearly lays down the following conditions for giving credit for TDS:

(3) (i) Credit for tax deducted at source and amount paid to the Central Government shall be given for the assessment year for which such income is assessable.

(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of –

(i) the information relating to deduction of tax furnished by the deductor to the income tax authority or the person authorised by such authority; and

(ii) the information in the return of income in respect of the claim for the credit,

Subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

6.9. Thus, one of the fundamental requirements is that the claim for credit of TDS ought to be made in the return of income in accordance with Rule 37BA, supra.

6.10. It is also pertinent to note there is a statutory time limit and specified form for claiming refund of taxes paid, including by way of TDS as provided in Section 239 of the Income Tax Act, which mandates as under:

"Section 239. (1) Every claim for refund under this Chapter shall be made by furnishing return in accordance with the provisions of section 139."

6.11 This statutory requirement has been invariably acknowledged and approved by the courts of law. The issue is not as to whether the appellant would get credit for the taxes paid, but it is as to how and when such claim ought to be made under the law. Even if normal time limits have been missed out due to bonafide reasons, the tax payer can always approach the

Board for condonation of delay and file a proper return thereafter by making a valid claim for TDS credit. Without following the laid down procedures within the ambit of law, appellant cannot force the subordinate authorities to confer a concession which they are not empowered under the statute in the first place.

6.12. In cases where these conditions are not met, be it non-payment of TDS or failure to make a claim for credit of TDS in the return etc., Board, in exercise of its powers under the Act, issues directions and delegates powers to subordinate authorities to deal with the matter in prescribed manner, including direction issued under Section 119(2)(b) of the Act. Unless and until such a delegated power is vested with the lower authorities, no discretion can be exercised in the matter of giving credit to TDS under the Act by any subordinate authority be it the Assessing Officer and or the First Appellate Authority for that matter. It is seen that in exercise of powers vested u/s. 119(2)(b) of the Act, instructions regarding claim of refund and or carry forward of loss etc., has been issued by CBDT recently vide Circular No.11/2024 dated 1 st October, 2024. As per this circular also, the powers to condone delay in filing of return claiming refund has been conferred on the subordinate authorities, namely, CCIT, Pr.CIT and CIT only up to a period of within 5 years from the end of the assessment year concerned. Such powers are not vested with the AO or CIT (A). Even otherwise, appellant's case is clearly outside the time limit of 5 years from the end of assessment year and no return is filed seeking condonation.

6.13. It is an undisputed legal dictum that if the law prescribes a procedure, it must be followed without deviation (Dharmin Bai Kashyap Vs Babli Sahu SC). When a power is given to do something in a specific way, it must be done only in that way. Even in cases where such belated claims were entertained by the Hon'ble Courts, the due procedures were always directed to be followed therein. Case in point is the directions of Hon'ble High Court

of Delhi in Hari Kishan Sharma Vs Government of NCT of Delhi W.P.(C).No.915 of 2019 dated September 3, 2024 (2024) 166 taxmann.com 688 (Delhi). The Hon'ble High Court directed the Board to condone the delay and allow the appellant assessee therein to file a revised return for making a fresh claim of refund. It did not do away with the need to file a proper return, duly filed and or validly condoned under the Act. The case laws relied on by the appellant are clearly distinguishable to the facts of appellant's case.

6.14. The appellant being a corporate entity and a regular tax payer ought to have known full well that time limit for filing of any revised return under the Act is already over. It also ought to know that in order to seek credit for additional TDS which was not made in the return of income filed earlier, other legal remedies available under the Act. Including filing of representation to CBDT under Section 119(2)(b) of the Act need to be explored. Appellant's claim that it did not come to know about the deduction of additional TDS by the concerned party does not inspire confidence for the simple reason that being a corporate assessee, the reconciliation of accounts need to be completed well before the AGM of every year and it is highly improbable that such huge sums remained outside the verification process for so long, over 8 years from the year 2015 to 2022. Nevertheless, in the absence of any power to grant credit for TDS not claimed in the return, the AO cannot be faulted in the instant case. Appellant's Grounds fail.

7. In the result, appeal is "Dismissed".

13. It is evident from the observation of Ld. AO and Ld. CIT(A) that the lower authorities has denied the claim of TDS credit primarily on the ground that the procedure laid down in Rule 37BA of Income Tax Rule was not followed by the assessee and further the claim has not been

made within 5 years in pursuant to CBDT circular no. 11/2024 dated 1st April 2024 and no steps has been taken for seeking condonation of delay by the assessee.

14. The question arises before us is that i) whether there is any dispute with regard to TDS claim to the tune of Rs. 73,24,074/-, if the same was duly deposited or not and ii) Whether the admitted claim of deposit of TDS on behalf of the assessee and the corresponding income having been offered in the same relevant assessment year, can be denied due to procedural lapse as TDS has not been claimed in the ITR?

15. The admitted facts which emerges from the above discussion that the assessee has asserted that the TDS amount of Rs. 73,24,074/- was deposited by Prime Focus Ltd, who did not inform assessee before filing the original return as well as revised return. We have noticed that the said assertion of the assessee has not been specifically denied by the revenue and in the absence of specific denial, the revenue is deemed to have admitted or acquiesced into the claim of the assessee that TDS credit of Rs. 73,24,074/- was deducted by Prime Focus Ltd and duly deposited and reflected into Form 26AS. Ld. CIT(A) has merely observed in para 6.5 of its order that admittedly, there was no valid claim made in

the return of income filed so far regarding this additional TDS and the claim that the corresponding income had been already offered to tax in the return of income filed was also never tested before the AO or the Ld. CIT (A). The said observation according to us is misconceived because the AO as well as Ld. CIT(A) has not made any effort to ascertain or enquire from the assessee regarding his claim that the corresponding income was duly offered and the assessee has positively asserted that the corresponding income of Rs. 7,32,40,740/- pertaining to Prime Focus Ltd was offered at the first instance itself i.e. original return followed with revised return of income. Since the said deposit of TDS was duly reflected in Form 26AS and for that reason the AO as well as Ld. CIT(A) has chosen not to make enquiry in that regard. Both the lower authorities has proceeded on the premise that procedural rule of 37BA of Income Tax Rules for claiming TDS credit for tax deducted at source has not been followed and the claim was not made in ITR and also not within the reasonable period as the same has been made after a period of 9 years and as per the settled legal precedents and legal provision, the claim of the assessee has been denied. It is a settled law that the rule and procedure are handmade of Justice. When substantial justice is required to be done, the rule and procedure does not come in the way of

upholding the principle of natural justice for imparting substantial justice. Admittedly the deduction and deposit TDS is a form of deposit of advance tax for which the assessee is lawfully entitled to be given credit otherwise keeping the said amount shall amount to unjust enrichment and will be in violation of Article 265 of the Constitution of India which mandates that no tax shall be levied or collected except by authority of law; if a tax has been paid in excess of the tax specified, the same has to be refunded. Thus, it is statutory as well as constitutional obligation of the revenue to give the TDS credit duly reflected in Form 26AS and the claim of the assessee cannot be denied just because of some procedural lapse on his part and in the light of various provision of the Income Tax Act, the assessee has to be granted TDS credit, deducted and deposited before finalizing the assessment. Admittedly in this case the assessee has made a claim for getting tax credit of TDS amounting to Rs. 73,24,074/- at the time of order giving effect by the AO which is nothing but the finalization of the original assessment proceedings. Therefore, we are of the considered opinion that the assessee has made the claim during the assessment proceedings which AO was duty bound to consider and allow the TDS amount credit.

16. For the above reasons, we are of the considered opinion that the Assessing Officer has unjustifiably denied credit of the TDS amount and the same should have been refunded at the earliest by the AO as the same has been reflected in Form 26AS from the beginning at the time of completion of assessment proceedings. Therefore, the impugned order suffers from illegality and is not sustainable and is accordingly set aside. The AO is directed to give is to credit of TDS amount of Rs. 73,24,074/- and in case the said amount is to be refunded, considering the same as depositing advance tax, the consequential interest u/s 244A of the Act may also be credited to the account of the assessee. The Ld. AO shall verify the necessary requirement regarding entitlement of assessee as directed by us including the corresponding income. Resultantly, the issues framed by us are decided negative.

17. In the result, appeal filed by the assessee is allowed in above terms.

Order pronounced in the open court on 20.11.2025.

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 20.11.2025
Dhananjay, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai