

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.722/PUN/2025
निर्धारण वर्ष / Assessment Year : 2022-23

Nanasaheb Bhagawan Sasar, Sus, Bavdhan B.O. Bawdhan, Pune-411021 PAN : ADHPS2728M	Vs.	Income Tax Officer, Ward – 2(2), Pune
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Suhas Bora
Department by :	Shri Ramnath P Murkunde
Date of hearing :	09-07-2025
Date of Pronouncement :	22-09-2025

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 09.01.2025 of the Ld. Additional/Joint Commissioner of Income Tax (Appeals), Kochi [**“Addl./JCIT(A)”**] pertaining to Assessment Year (**“AY”**) 2022-23.

2. Briefly stated, the facts of the case are that the assessee is an individual. He filed his return of income belatedly u/s 139(4) of the Income Tax Act, 1961 (**the “Act”**) on 28.12.2022 for AY 2022-23 declaring a total income of Rs.2,76,47,210/-. During the AY 2022-23, the assessee sold his ancestral land jointly held by him and his son, Mr. Amit Sasar for a total consideration of Rs.13,00,00,000/-. The said consideration was received by the assessee and his son in equal ratio i.e. Rs.6,50,00,000/- each. The buyer of the said land deducted the entire TDS u/s 194A @ 1% amounting to Rs.13,00,000/- in the name of the assessee only. Accordingly, in the return of income, the assessee claimed full amount of TDS deducted and credited to his account as reflected in Form 26AS amounting to Rs.13,00,000/-. However, the long term capital

gain on the said transaction was calculated considering the sale consideration of equal share of Rs.6,50,00,000/-. The balance of Rs.6,50,00,000/- has been shown in the return of income of the assessee's son and no TDS credit has been claimed in his return. A defective notice was issued for the reason that the gross receipts shown in Form 26AS being higher than the total of the receipts shown under all heads of income on which credit for TDS has been claimed in the return of income filed. The assessee filed its response to the said defective notice categorically stating that, *"the sales figure was incorrectly reported in the SFT return twice and therefore value appears to be Rs.26 crores. The said land is proportionately distributed between the assessee and his son Mr. Amit Sasar (PAN: BNEPS4461B) in the ratio of 1:1. The total sale consideration is Rs.13 crores, i.e. Rs.6.5 crores each. Accordingly, while filing ITR, the capital gains on sale of land is shown in the ITR of assessee and his son Mr. Amit Sasar in ratio of 1:1 and paid the tax liability due thereon."*

2.1 Thereafter, intimation order u/s 143(1) of the Act was issued by the Ld. Assessing Officer/Central Processing Centre **[("AO")/("CPC")]** on 27.02.2023 wherein the Ld. AO/CPC considered the income as per return of income filed earlier but denied the proportionate TDS credit of Rs.6,50,000/- and accordingly calculated interest u/s 234A, 234B and 234C of the Act. In response section 143(1) intimation order, the assessee filed rectified return of income on 03.03.2023 wherein he claimed full TDS credit of Rs.13,00,000/- and made a disclosure with respect to the gross receipts of Rs.6,50,00,000/- under the head "Income transferred to others" against the PAN of his son, Amit Sasar. Disregarding the response and the rectified return furnished by the assessee, the Ld. AO/CPC passed the rectification order u/s 154 of the Act on 03.03.2023 in which the income is considered as per the return of income, however, proportionate TDS credit of Rs.6,50,000/- has not been given and accordingly interest u/s 234A, 234B and 234C is calculated.

3. Aggrieved by such rectification order passed by the Ld. AO/CPC, the assessee preferred an appeal before the Ld. Addl./JCIT(A) who dismissed the appeal of the assessee upholding only the proportionate TDS credit allowed by the Ld. AO/CPC by observing as under :

“4.8 The ground of appeal relates to not giving credit to the full amount of TDS as reflecting in Form 26AS. The returns of income filed on 28/12/2022 and 03/03/2023 for the Assessment Year 2022-23 have been verified. It is seen that the appellant has shown the same amount of sale consideration of Rs.6,50,00,000/- in both the returns of income filed on the above said dates and disclosed the same Long Term Capital Gains of Rs.2,61,16,879/- in both the ITRs filed.

4.9 The Return of Income is the basic document in which the correct income as well as the correct TDS are to be admitted and claimed properly by the assessee for claiming any credit. If the appellant claims the full amount of TDS of Rs. 13,00,000/- as reflecting in Form 26AS and has offered the corresponding income/receipts of Rs. 13,00,00,000/- in his return of income, then the correct TDS credit reflected as per Form 26AS should be given.

4.10 But in this case, the appellant has offered, only his 50% share of the sale consideration amounting to Rs.6,50,00,000/- in both the Returns of Income filed on 28/12/2022 and 03/03/2023, but he claims credit for the 100% TDS of Rs. 13,00,000/-, which is not correct.

4.11 Therefore, it is held that the proportionate TDS Credit allowed by the CPC in the rectification order dated 03/03/2023 is correct and as per law and hence the grounds of appeal of the appellant is dismissed.”

4. Dissatisfied, the assessee is in appeal before the Tribunal raising the following grounds of appeal :

“On facts and in law:

- 1. The Ld. CIT(A) while confirming the action of the CPC failed to consider the first adjournment request made by the appellant on 06.01.2025 wherein the appellant has requested to provide time as the documents are under compilation vide Ack No. FOS006133325613 and passed an order on the presumption that the appellant has submitted the submissions (which is factually incorrect as the appellant has not submitted any submission on the contrary, requested for adjournment).*
- 2. The Ld. CIT(A) while confirming the action of the CPC failed to consider the important fact that during the sale of jointly held land the buyer inadvertently deducted entire TDS on the name of the appellant instead of the appellant and his son both. Since the issue is debatable, it is not a mistake rectifiable U/Sec. 154 of the Act.*
- 3. The Ld. CIT(A) while disallowing the TDS credit of amounting to Rs. 6,54,022/- failed to appreciate that,*
 - During the sale of jointly held land, the buyer inadvertently deducted entire TDS on the name of the appellant instead of the appellant and his son both. Since the issue is debatable, it is not a mistake rectifiable U/Sec. 154 of the Act.*
 - The appellant's son has offered the income from sale of land in his return of income and has paid the taxes without claiming the TDS of his share.*
 - The form 26AS of the appellant clearly disclosed the credit of TDS in the name of the appellant.*
- 4. The appellant may kindly be permitted to add to or alter any of the grounds of appeal, if deemed necessary.”*

5. Although, various grounds of appeal have been raised by the assessee, all these relate to short credit of TDS given by the Ld. AO/CPC in the rectification order u/s 154 of the Act dated 03.03.2023 and confirmed by the Ld. Addl./JCIT(A) except ground No. 1 which has not been pressed by the Ld. AR and therefore, dismissed as “not pressed”.

6. The Ld. AR submitted that TDS was wrongly credited entirely to the assessee's PAN as reflected in Form 26AS. The buyer of the land inadvertently deducted entire TDS in the name of the assessee instead of making proportionate deduction in the hands of the assessee and his son. The assessee's son has offered his share of income in his return of income and has paid the due taxes thereon without claiming any TDS. Further, referring to the provisions of section 199(1) r.w. Rule 37BA of the Income Tax Rules, 1962, the Ld. AR submitted that once TDS is deducted and deposited in the deductees name (i.e. assessee in the present case) it must be credited to him. Relying on the decision(s) in the case of Anil Ratanlal Bohora Vs. ACIT in ITA No. 675/PUN/2022 for AY 2021-22, dated 19.01.2023 and in the case of iGate Infrastructure Management Services Ltd. Vs. DCIT in ITA No. 1703/Bang/2016 for AY 2010-11, dated 28.04.2017, the Ld. AR submitted that the assessee should get the credit of the entire TDS deducted in his name by the buyer of the land. Since, it was a mistake on the part of the buyer/deductor, the seller/deductee should not suffer and should be entitled to claim it.

7. The Ld. DR relied on the order of the Ld. Addl./JCIT(A).

8. We have heard the Ld. Representatives of the parties and perused the material available on record as well as paper book filed by the Ld. AR on behalf of the assessee. We have also perused the judicial precedents cited by the Ld. AR. Undisputedly, the impugned property sold by the assessee was jointly held by him and his son, Mr. Amit Sasar and therefore both of them received the consideration of Rs.13,00,00,000/- in equal proportion of Rs.6,50,00,000/- each. The buyer of the property however deducted the entire TDS under the provisions of section 194A of the Act amounting to Rs.13,00,000/- in the name of the assessee only due to which the TDS of Rs.13,00,000/- was wrongly

credited entirely to the assessee's PAN and the same is reflected in Form 26AS of the assessee. The assessee's son has disclosed his share of Rs.6,50,00,000/- in his return of income and paid the due taxes thereon without claiming any TDS credit for the same. Relying on the decision of the Bangalore Tribunal in the case of iGate Infrastructure Management Services Ltd. (supra) and the Pune Tribunal in the case of Anil Ratanlal Bohora (supra), the Ld. AR contended that the procedural lapses cannot defeat substantive rights, and the assessee must get full credit of Rs.13,00,000/-. We find some force in the arguments advanced by the Ld. AR. The Revenue cannot enrich itself at the cost of the assessee. The Bangalore Tribunal in iGate Infrastructure Management Services Ltd.'s case (supra) under the similar set of facts as that of the assessee in the present case, has set aside the matter to the file of the Assessing Officer to adjudicate the issue afresh after making necessary verification as to whether the deductor has deducted the TDS and deposited the same in the Government Account and if yes, allow the credit of the TDS to the assessee. The relevant observations and findings of the Tribunal in iGate Infrastructure Management Services Ltd.'s case (supra) is reproduced below :

"6. Having carefully examined the order of lower authorities in the light of rival submissions, we find that undisputedly there is a mistake committed by the deductor while deducting and depositing the TDS, but it does not mean that deductee should suffer for the act of deductor. When there is mismatch in the TDS accounts, the AO should make necessary verification and if it is found that TDS was deducted and paid in the Government account, credit of the same should be given to the deductee. This aspect was also clarified by the CBDT by issuing Instruction No.5/13. For the sake of reference, we extract the Instruction as under:-

"3. In view of the order of the Hon'ble Delhi High Court (reference: para 50 of the order); it has been decided by the Board that when an assessee approaches the Assessing Officer with requisite details and particulars in the form 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. However, the Assessing Officer is at liberty to ascertain and verify the true and correct position about the TDS with the relevant AO (TDS). The AO may also, if deemed necessary, issue a notice to the deductor to compel him to file correction statement as per the procedure laid down."

7. In the light of this Instruction, we set aside the order of CIT(Appeals) and restore the matter to the file of Assessing Officer to adjudicate the issue afresh, after making necessary verification and if it is found that the deductor has deducted the TDS and deposited in the Government account, credit of the same should be given to the assessee."

9. In light of the factual matrix of the case and the legal position set out above and in the absence of the any contrary material brought on record by the Revenue to enable us to take a different view, in our considered opinion, the assessee should be given the credit of the entire TDS of Rs.13,00,000/- as claimed by him. We, therefore, deem it fit, to set aside the order of the Ld. Addl./JCIT(A) and restore the matter back to the file of the Ld. CPC/AO to adjudicate the issue afresh and allow full credit of TDS to the assessee.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd September, 2025.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd September, 2025.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune