

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI

BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.-442/Del/2020
(Assessment Year: 2017-18)

BAE Systems (Operations) Ltd.,
PO Box 87, WARWICK HOUSE,
FARNBOROUGH, AEROSPACE
CENBTE, FARNBOROUGH,
HAMPSHIRE, GU146YU, UNITED
KINGDOM

Vs. DCIT
**CENTRALIZED PROCESSING
CENTER, BANGALORU.**

PAN No. AADCB0296M
Appellant

Respondent

Assessee by Sh. Kanchan Kaushal, FCA
Sh. Rishab Malhotra, CA
Revenue by Sh. Shiv Swaroop Singh, Sr. DR

Date of hearing: 10/12/2020
Pronouncement on 10/12/2020

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 21/11/2019 by the learned Commissioner of Income Tax (Appeals), Delhi-42 ("Ld. CIT(A)") in not granting TDS credit of Rs. 1,14,17,141/- for the assessment year 2017-18, BAE Systems (operations) Ltd ("the assessee"), preferred this appeal.

2. Brief facts of the case are that the assessee is a company incorporated

in and is a tax resident of United Kingdom and primarily involved in the production of and providing support in relation to military aircraft. Assessee claims to have been following the Mercantile system of accounting and the Revenue from the service contract is accounted for on Mercantile basis as per the terms of agreement, namely, as and when services are rendered in accordance with the proportionate completion method. The total Revenue received from Hindustan Aeronautics Limited for the assessment years 2017-18 and 2018-19 was Rs. 7,99,32,759/-, a service recipient, as reflected in form 26 AS for assessment year 2018-19. Out of this amount a sum of Rs. 4,31,87,175/- was offered to tax in assessment year 2017-18 and the balance was offered to tax in the assessment year 2018-19. The Hindustan Aeronautics Limited had deducted the tax on the entire amount of Rs. 7, 99, 32, 759/-in the assessment year 2018-19 and the same was reflected in form 26AS of the assessment year 2018-19.

3. Assessee submits that while they declared the income of Rs. in 4,31,87,175/-to the credit of its profit and loss account for the assessment year 2017-18, they correspondingly claimed proportionate tax deducted at source to the tune of Rs. 1,14,17,141/-which was a part of the total TDS claimed to the tune of Rs. 3, 01, 86, 700/-in the return. Grievance of the assessee is that when the return of income for the assessment year was processed by the Centralised Processing Centre ("CPC") under section 143(1) of the Income Tax Act, 1961 (for short "the Act"), in the intimation the CPC did not allow credit of TDS to the tune of Rs. 1, 14, 17, 141/-, because the same was not reflected in form 26AS per the assessment year 2017-18 but are entirely stood included in form 26AS for the assessment year 2018-19.

4. When the assessee preferred appeal, it is submitted that, though the Ld. CIT(A) accepted the fact that the assessee is entitled to the TDS credit, did

not allow the same only because the same did not reflect in form 26AS for the assessment year 2017-18 and, therefore, the CIT(A) directed the assessee to approach the deductor or to rectify the TDS statement to report correctly the tax deducted at source.

5. In the circumstances, the assessee is before us in this appeal stating that though the total income as disclosed by the assessee in the return of income was accepted during the processing of the return of income, but the credit for the corresponding TDS as claimed by the assessee was not given and ACIT also failed to grant the relief by looking at the facts and instead the Ld. CIT(A) directed the assessee to approach the director to rectify the TDS statement to report correctly the tax deducted at source.

6. While placing reliance on section 199 of the Act and also rule 37 BA of the Income Tax Rules 1962 ("the Rules"), Ld. AR submitted that a harmonised reading of the Act and the Rules permit the grant of TDS in the year in which the income/receipt on which the tax was deducted at source was offered/assessable to tax, and therefore, prayed this Tribunal to grant the proportionate credit of TDS reflected in form 26AS for the assessment year 2018-19, for the assessment year 2017-18.

7. We have gone through the record in the light of the submissions made on either side. Insofar as the facts are concerned, absolutely there is no dispute. Even according to the Ld. CIT(A), the issue has come up in the assessment year 2017-18 only due to the wrong reporting by the deductor.

8. Section 199 (3) of the Act says that the Board may, for the purpose of giving the credit in respect of tax deducted or tax paid in terms of the provisions of the chapter, make such Rules as may be necessary, including the

Rules for the purpose of giving credit to a person other than those referred to in subsection (1) and subsection (2) and also the assessment year for which such credit may be given. So also according to rule 37 BA (3) of the Rules, 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; and that 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 the years in the same proportion in which the income is assessable to tax.

9. On a careful consideration of the matter in the light of the provisions under section 199 (3) of the Act and also rule 37 BA (3) of the Rules, we are of the considered opinion that in this case where the tax has been deducted at source and paid to the Central government by the Hindustan Aeronautics Limited in the assessment year 2018-19 and such TDS relates to the income assessable over the assessment years 2017-18 and 2018-19, the credit has to be given in the proportion in which the income is assessable to tax for the assessment years 2017-18 and 2018-19 respectively. In the circumstances we are of the opinion that the ends of Justice would be met by directing the assessing officer to look into the fact whether the TDS deducted by the Hindustan Aeronautics Limited and reflected in form 26AS for the assessment year 2018-19, relates to the income/receipt in the hands of the assessee which is assessable for the assessment years 2017-18 and 2018-19, and if so then the assessing officer is directed to grant proportionate credit for such years.

10. We, therefore, set aside the impugned order and remand the issue to the file of the assessing officer to verify whether the TDS deducted by the Hindustan Aeronautics Limited and reflected in the 26AS for the assessment year 2018-19 relates to the receipt in the hands of the assessee assessable for

the assessment years 2017-18 and 2018-19, and if it is so, learned Assessing Officer will allow proportionate credit for these 2 years. With this observation we allow the appeal of the assessee.

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

Order pronounced in the open court on this the 9th day of December, 2020.

Sd/-
(R.K.PANDA)

ACCOUNTANT MEMBER

Dated: 10-12-2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI